Supreme Court, U.S.
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No. 06-708

In the Supreme Court of the United States

M. EUGENE GIBBS, ESQ.,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

M. Eugene Gibbs, *Pro-se*
4257 Monterey Drive
Florence , SC 29501
(843) 610-0674

QUESTIONS PRESENTED

This case represents the ease in which a Black attorney may be destroyed to protect the largest art theft in the history of this country. Art valued at more than two billion dollars. Do— "we" adhere to the *Rule of Law*, or the rule of self interest?

1. **Whether A Trial Judge May Have A Plaintiff Arrested Based On Letters Attached As An Exhibit To A Motion For Temporary Restraining Order Where The Letters Concerned Issues Of Disability Certified By Defendant When Defendant Failed To Appear Or File A Complaint.**

II. **Whether An Attorney May Indicted And Held Without Bail Where The Reasonable Recipient Of An Alleged Threat Did Not Appear Before The Grand Jury Or File A Complaint.**

III. **Whether The Charge of Making A Threat Require General Or Specific Intent, A Reasonable Recipient And Does Specific Intent Go To The Belief Of The Sender or The Mailing Of The Alleged Threat.**

PARTIES TO THE PROCEEDING

The following individuals and entities are parties to the proceeding in the court below:

M. Eugene Gibbs, Defendant-Appellant;

United States of America, Plaintiff-Respondent.

CORPORATE DISCLOSURE STATEMENT

In accordance with Supreme Court Rule 29.6, Petitioner states that M. Eugene Gibbs, Esq., is not a corporation.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner respectfully pray that a writ of certiorari be issued to review the judgment of the United States Court of Appeals for the Forth Circuit in this case.

OPINIONS BELOW

The decision of the court of appeals is reported at 04-4760 (4th Cir.). The opinion of the district court is reported at 03-400PMJ (MD).

JURISDICTION

The opinion of the United States Court of Appeals for the Fourth Circuit was filed on June 14, 2006. Plaintiff's Petition for Rehearing en banc was denied on August 22, 2006. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The First Amendment to the U.S. Constitution provides:

Congress shall make no law...abridging the freedom of speech...or the right of the people peaceably to assemble, or to petition the Government for a redress of grievances.

The Fifth Amendment to the U.S. Constitution provides:

No person shall be .... deprived of life, liberty, or property, without due process of law.

The Sixth Amendment to the U.S. Constitution provides:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial ... and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

STATEMENT OF THE CASE

Gibbs filed an emergency motion for Temporary Restraining Order (T.R.O.). The suit, *Gibbs v. Department of Labor (DOL),* JFM-02-45 (Judge J. Frederick Motz), United States District Court for The District of Maryland. The motions were filed to enforce the decision of the Secretary, which reinstated Gibbs' benefits; more than two hundred thousand dollars.

Gibbs provided the required notifications that the motion would be heard on August 11, 2003, at the Federal District Court For The District of Maryland, Baltimore at 10:00 a.m. The motion was assigned to Chief Judge Benson A. Legg. Gibbs docketed the motion pursuant to his notice. Judge Legg did not hold a hearing nor provide Gibbs any information, thou the defendant did not appear. On August 20, 2003, Gibbs amended his motion for Temporary Restraining Order, and docketed his appeal (U.S. 4th Cir.).

F.B.I., agents, obtained an arrest warrant on August 21, 2003, and Gibbs was arrested on August 22, 2003. The agents seized two files from Attorney Gibbs; *Gibbs v. Department of Labor* (DOL); *Gibbs v. Brady*, and related materials. The arresting agent informed Gibbs

his arrest was based on a request from Chief Judge Legg, based on letters Gibbs attached as exhibits to his motion. That the letters thou written to DOL, when mailed to the court, constituted a crime.

Gibbs' case was assigned to Judge Peter J. Messitte. Paula Xinis, Esq., was assigned to represent Gibbs. The U.S. Attorney, Jim Trusty, AUSA, sought to have Gibbs held without bail, alleging Gibbs posed a threat to the community: based on a medically induced incident *nolle prosed* fifteen years prior to Gibbs' arrest. Ms. Xinis had Dr. Moldauer interview Gibbs and presented his report. Dr. Moldauer informed the court, Gibbs did not present a danger to himself or the community. Mr. Trusty did not present any witnesses. Gibbs was granted bail. However, Prior to Gibbs being released, Judge Day's Order was stayed, and later reversed by Judge Bennett . Gibbs was indicted on two counts of mailing a threat to a government official, and three counts of interstate communication of a threat.

Ms. Xinis notified Gibbs on November 7, 2003, Chief Judge David A. Faber, DCSDWVA, was assigned Gibbs' case. Gibbs was informed he would be transferred to SuperMax prison for the convenience of Chief Judge Legg. December 15, 2003, Judge Faber granted Gibbs' motion to dismiss counsel and granted Gibbs' request to represent himself. On January 23, 2003, Chief Judge Faber cancelled Gibbs' motions hearing and trial, and ordered Gibbs to undergo a psychological evaluation, based on Gibbs' continued insistence on representing himself, and Gibbs' witness list. *Chief Judge Legg, signed an order on February 5, 2004, assigning Gibbs' case to Chief Judge Faber, DCSDWVA, three months after Judge Legg first appeared on Gibbs' case.*

Gibbs was sent to New York for the evaluation on February 3, 2004, without having counsel appointed. Gibbs was held in solitary confinement for ten days prior to his first interview, Gibbs invoked his *Miranda* rights. Counsel was eventually appointed, however Gibbs continued to invoke his *Miranda* rights. Gibbs was found to be competent if he did not mention the stolen art, *Gibbs v. Brady.* Gibbs' psychologist, Dr. Moldauer concluded this was not a proper finding, stating, "one is either incompetent or competent, the not mentioning of one fact cannot be the determining factor. Chief Judge Legg found Gibbs to be competent and ruled Gibbs could represent himself. Gibbs', case was delayed more than six months. Gibbs was held for thirteen months; six months at SuperMax Prison under inhumane conditions. Gibbs pled guilty on September 7, 2004.

For ten years, Gibbs represented the Estate of William H. Johnson (artist). The gravamen of the civil case concerns art stolen from Wm. Johnson, other Black artists and Historical Black Colleges and Universities (HBCUs). The value of the art is assessed at more than two billion dollars. After having been injured as a result thereof, Gibbs filed suit in New York Supreme Court-Putnam County. Gibbs filed to amend the complaint based on documents provided by the Inspector General, at the Smithsonian Institution. Gibbs sought to include the Justice Department and F.B.I. A month prior to Gibbs' arrest, Gibbs filed a Motion For Temporary Restraining Order; New York Supreme Court-Putnam County. Gibbs alerted the court that Gibbs was in imminent danger. The defendants knew Gibbs would use the two hundred thousand dollars awarded by DOL, to prosecute the art case.

REASONS FOR GRANTING THE PETITION

Gibbs, represents the Estate of the late artist, William H. Johnson. Five months prior to Gibbs' arrest, Gibbs filed a motion to amend his complaint; 03-/298, New York Supreme Court, Putnam County. The amended complaint added the Justice Department and F.B.I. Concerning conduct designed to protect the Smithsonian Institution's possession of more than two billion dollars of stolen art; their deliberate violation of copyright laws; and having committed Fraud on the Federal District Court of South Carolina, Charleston Division. Proof of these acts were provided to Gibbs by the Inspector General, at the Smithsonian Institution.

And

Mr. Trusty, Assistant U.S. Attorney, appeared before the grand jury with full knowledge the Department of Labor, did not and would not file charges. Nonetheless, Mr. Trusty obtained a five count indictment. App. at A-37-41. The secrecy of the grand jury relies on the integrity and sound judgment of the U.S. Attorney. It must be determined whether the U.S. Attorney tainted the process for personal gain; destroying the art case in which Gibbs named the Justice Department and F.B.I., as being complicit in a conspiracy and racketeering. The issues which are fully supported by the facts, *infra*, raise serious questions!

And

Whether prior to trial a [d]efective indictment may be dismissed based on First and Fifth Amendment grounds, when Gibbs was held without bail and all appeal rights were extinguished.

And

THE COURT: All right.... I find based on all these things that there is reasonable cause to believe that this defendant may presently be suffering from a mental disease or defect that renders him mentally incompetent to the extent that he is unable to understand the nature and consequences of the proceedings against him or to assist properly in his defense. And I agree with Mr. Trusty that the principal question here is whether he is capable of assisting properly in his defense, *particularly in view of the fact that he has insisted on representing himself in this case.* App. at A-55-56, App. at A-44-63. The *Sixth Amendment* is reduced to ....

Gibbs is a Black attorney, is he "crazy" because he can articulate an alternative theory for his arrest. That Gibbs knows the Smithsonian Institution is a private institution: the Board of Regents consisting of; The Chancellor-Chief Justice of the U.S. Supreme Court; the U.S. Vice President; three U.S. Senators; three U.S. Representatives; and five civilians. Is it that Gibbs located 2,000 works of art stolen fifty years ago. Is it that Gibbs can prove William "Bill" Cosby has stolen art and his Curator, Dr. David Driskell, hundreds of works of art, or that Dr. Driskell "arranged" the purchase art and/or portraits for President and Senator Clinton, etc.

When Gibbs filed suit in 1996, in an effort to recover art stolen from the Estate of William H. Johnson, Gibbs had established a successful law firm, *Gibbs,* Scott & Redmond, Florence, South Carolina. Gibbs, is litigating the largest art theft in the history of this country. Its estimated value is more than two billion dollars. The gravamen of the case is conspiracy and racketeering.

And

This Court must resolve the conflict between the Forth Circuit and other circuits, whether a threat as defined by 18 U.S.C. §§ 875(c) and 876(c), requires specific or general intent. And, whether specific intent relates to the knowing mailing of a threat or whether the communicator intends a reasonable recipient, having knowledge of the content, receive it as a threat.

Gibbs was indicted pursuant to 18 U.S.C. § 876, which had been amended at the time Gibbs was arrested. Gibbs. Chief Judge Faber could not explain the penalty imposed by the statute, because the statute changed one crime to four separate crimes; § 876(a), (b), (c) and (d), carry a penalty ten years, and two twenty years.

And

The suit filed in the District Court of Maryland, concerned benefits reinstated by the Department of Labor, valued at more than two hundred thousand dollars. Chief Judge Legg, DCMD, was not aware of the suit Gibbs filed in New York Supreme Court, Putnam County. A suit in which Gibbs was seeking to add the Justice Department and F.B.I., alleging conspiracy and racketeering. The F.B.I. agent committed perjury by certifying under oath the letters were mailed to the court. When in fact the motion was hand carried and filed with the clerk, Gibbs' copy being stamped with *blue ink*. Letters attached as exhibits to Gibbs' motion for Temporary Restraining Order, were the basis for Gibbs' arrest.

1. An Attorney May Not Be Arrested Based On Letters Attached As An Exhibit To A Motion For Temporary Restraining Order When The Department Of Labor Refused To File A Complaint.

A. This Case Goes to the Heart Of The Democratic Process And The First, Fifth and Sixth Amendments.

Gibbs filed an emergency motion for Temporary Restraining Order (T.R.O.). The suit, *Gibbs v. Department of Labor (DOL)*, and motions were filed in the Federal District Court of Maryland, Northern Division. The gravamen of the suit concerned defendants in the art case, having conspired to an employee(s) to withhold Gibbs' reinstated benefits, two hundred thousand.

The motion was transferred from Judge J. Frederick Motz, to Chief Judge Legg. Judge Legg directed the U.S. Marshals request the F.B.I. interview Gibbs, based on letters Gibbs attached to his emergency motion for Temporary Restraining Order which was filed on, August 11, 2003.

Gibbs amended his motion for Temporary Restraining Order, and docketed his appeal (U.S. 4th Cir.) on August 20, 2003. The F.B.I.'s request for an interview was circumvented. An arrest warrant was secured on August 21, 2003, and Gibbs was arrested on August 22, 2003. The F.B.I., agents seized two files from Attorney Gibbs; *Gibbs v. Department of Labor* (DOL); *Gibbs v. Brady*, and related materials.

The context of the letters concerned a prognosis by Gibbs' psychiatrist. The prognosis addressed a predictable violent response, if the criminal acts by the defendants continued. Gibbs realized the situation was "out of control" and sought to have the courts intervene.

The F.B.I., based on direction and exhibits from Chief Judge Legg, obtained an arrest warrant. The arrest warrant was based on Gibbs having mailed the exhibits to the court. But, Gibbs hand carried the motion to the court. When the F.B.I., discovered Gibbs had filed the motions in person, consequently, Gibbs' copy bore the clerk's stamped seal; *blue ink*. The F.B.I. and U.S. Attorney took possession of Attorney Gibbs' case files, which they refused to relinquish to Gibbs' attorney, Paula Xinis. The possession of Gibbs' file allowed the discovery of the stamped document. The file, *Gibbs v. Department of Labor*, JFM-02-45, alerted the U.S. Attorney the original charges filed under the defective arrest warrant, could not support Gibbs' arrest.

When questioned concerning the charges filed against Gibbs, Jim Trusty, AUSA, stated in open court:

> *MR. TRUSTY, (AUSA):* Well, these pleadings in terms – they probably will not generate counts by way of criminal conduct because it is my understanding that with the time stamp it shows they were hand delivered, and I'm not sure if there is any – they would not be covered by mailing or wiring threatening communications. App. at A-28.

B. When A Court Commits An Error Gibbs' Life May Not Be Placed In Danger To Force A Guilty Plea.

Gibbs was transferred to SuperMax prison on December 15, 2003, and was locked down as many as twenty three hours a day. From December 15 - 24, 2003, Gibbs was denied communication with his wife and attorney. SuperMax is the most maximum security prison in the state of Maryland. It houses death row inmates, in fact, Gibbs watched as one inmate was escorted to be executed and was in fact executed. The State of Maryland condemned SuperMax, after a study concluded, "the conditions caused inmates to be more violent." State inmates are no longer housed at SuperMax, only death row inmates and federal pretrial detainees.

Gibbs notified the warden that because the temperature in Gibbs' cell reached temperatures in excess of one hundred degrees, Gibbs could die. Gibbs was also denied a flu shot, another situation that could result in Gibbs' death. Both situation were a direct result of Gibbs having been treated with steroids to save Gibbs' life as a result of *Sarcoidosis.*

Gibbs was locked down for as many as 19 hours. This policy did not change until Gibbs went on a 21day hunger strike. In fact, Gibbs went on three hunger strikes. The last hunger strike was conducted to force the institution to give Gibbs a pen and paper to file a motion. As a direct result of the hunger strikes, Gibbs, was denied access to the "law library."

On or about February 3, 2004, Gibbs was sent to New York for the psychological examination. Gibbs arrived in New York on February 5, 2004, and placed in "solitary confinement" without cause, locked down for 24 hours per day. During Gibbs' transport to and from New York, Gibbs was only permitted to wear a tee shirt. *Temperatures reached a low of about 30 degrees.*

Gibbs was transported from SuperMax, Baltimore, MD, driven to Harrisburg, PA, driven one and one half hours, put on a plane and flown to Oklahoma City, OK, held in a holding cell most of the evening. At 3:00 a.m. on February 4, 2004, Gibbs was awaken and flown to Miami, Fl, then to Tampa Bay, FL, then to Atlanta, GA. Arriving about 5:00 p.m. Gibbs was placed in a holding cell until about 1:00 a.m. Gibbs was placed in a two person cell which had three mattress and Gibbs was the fourth person in the cell. Gibbs was awaken at 3:00 a.m. on February 5, 2004, and flown to Pittsburgh, PA. then to Manchester, NH, then to Stewart Field, NY. Gibbs was driven one and one half hours to New York City, and placed in solitary confinement for almost two weeks.

Gibbs' first interview was on or about February 18, 2004, Gibbs invoked his *Miranda* rights. Gibbs was without legal representation and Dr. Ryan refused to video tape the interview. Judge Faber moved sua sponte re-appointing Paula Xinis, Office of the Federal Public Defender as counsel, February 4, 2004. Paula Xinis withdrew from the case on February 13, 2004 and the court appointed Anthony D. Martin on March 1, 2004. On March 18, 2004, The Warden, Wilson, requested an

extension because Gibbs invoked his *Miranda* rights. Judge Faber granted the extension App. at A-27-30.

On or about April 7, 2003, Gibbs was returned to SuperMax. A competency hearing was set for April 20, 2004. Gibbs was not notified of this hearing. For reasons unknown to Gibbs, Gibbs competency hearing was cancelled on April 20, 2004.[1].

On June 1, 2004, Gibbs filed a motion for expedited bail hearing. A second motion for review of Pre-Trial Detention and Release to Third Party Custody, was filed on July 14, 2004. And, a third motion for Immediate Release from Pre-Trial Detention was filed on July 30, 2004. There was no action taken on said motions. App. at A-32-33. On August 9, 2004, the U.S. Attorney offered as evidence, their Psychologist report which stated Gibbs was competent as long as Gibbs did not mention the stolen art. Judge Faber found Gibbs to be competent to stand trial and represent himself. But, Judge Faber denied Gibbs' motion to be released. *Gibbs was denied access to the law library and awaken many mornings to cause sleep depravation.*

Given the facts as outlined, *supra*, and Gibbs' experience as an attorney, Gibbs formed a reasonable belief a trial, would have resulted a sentence of between ten and fifteen years.

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[1] Gibbs was taken to court and placed in a holding cell. At the end of the day the U.S. Marshalls were informed a hearing had been scheduled but cancelled. By order of Judge Faber upon motion of Anthony Martin, the hearing was cancelled. App. at A-31.

C. The Indictment Was Defective Because The Department of Labor Refused To Appear Before The Grand Jury Or File A Complaint.

The Department of Labor, having certified Gibbs' disability based on medical records, had a full and complete understanding of the facts, and refused to file a complaint. DOL, understood, Gibbs wanted to avoid the prognosis of Gibbs' psychiatrist, Dr. David Gardner. The Department of Labor, acknowledged Gibbs' benefits were improperly suspended and reinstated the benefits, valued at more than two hundred thousand dollars.

The U.S. Attorney having failed in an attempt to have the Department of Labor file a complaint, secured an indictment without a crime. The letters Gibbs transmitted via personal service, concerning Gibbs' disability are provided protection under the *First Amendment.*[2] The letters referenced the subject of Gibbs' disability: Gibbs' family being subjected improper attacks and Gibbs being subjected to illegal and unfair practices.

D. Absent the Granting Of Certiorari, The Art Case Will Fail.

The acts listed below were designed to destroy the art case and formed the basis for the Temporary Restraining [O]rders sought by Gibbs, to wit:

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2 See *U.S. v. Darby*, 37 F.3d 1059,1064 (4th Cir. 1994)

The defendant filed three motions for sanctions against Gibbs before the Federal District Court Southern District of New York - all denied; Filed three motions for sanctions against Gibbs before the U.S. 2nd Circuit - all denied; Filed false criminal charges against Gibbs with Internal Revenue Service (during litigation) - Prosecution declined; Filed false criminal charges against Gibbs with Criminal Investigation Division, Department of Labor (during litigation) - Prosecution declined; Filed false complaints against Gibbs with Maryland Bar (during litigation - No results; Filed false criminal charges against Gibbs with the South Carolina Bar (during litigation) - Gibbs asked to be placed on inactive status,[3] Gibbs refused to defend and was disbarred; Stole Gibbs' medical records from the State of Connecticut (during litigation); "affected" the Department of Labor's decision to pay Gibbs' reinstated benefits, valued at more than two hundred thousand dollars, (during litigation), etc.

This Court must accept this case to address the disconnect between the rules this Court set for the fair and balanced administration of justice vs. the liberties, lower court judges and prosecutors take.

3

Gibbs notified the 2nd Circuit, that Gibbs was placed on inactive status, and requested leave to withdraw as attorney for the Estate of William H. Johnson. The Court denied Gibbs' request, and the defendants filed charges with the South Carolina Bar, informing them Gibbs was practicing law after being placed on inactive status. *Gibbs, refused to defend!*

II. An Attorney May Not Be Indicted And Held Without Bail Where The Reasonable Recipient Of An Alleged Threat Did Not Appear Before The Grand Jury Or File A Complaint.

A. This Case Goes To The Heart Of The Democratic Process And The Fifth Amendment.

Judge Day asked Mr. Trusty, AUSA, whether he had anything other than the fifteen year old incident which was *nolle prosed*. He stated, *"We cannot find so much as a parking ticket concerning [Attorney] Gibbs' 60 years."* Mr. Trusty, also admitted Gibbs, at this point, had not committed a crime. App. at A-28.

Judge Bennett in vacating the order of release issued by Magistrate Day, failed and neglected to make a finding of fact that conditions or combination of conditions existed to ensure public safety [A.168-69].[4] Gibbs directed Attorney Xinis to appeal Judge Bennett's Order reversing Judge Day's granting of bail. She failed to do so. Nor did Ms. Xinis inform Gibbs, she had clerked for Judge Diana Gibbons-Motz, 4th Circuit, wife of Judge J. Frederick Motz, whom the U.S. Attorney made allegations that Gibbs threatened. Gibbs' case was assigned to Judge Peter J. Messitte. Paula Xinis, Esq., was assigned to represent Gibbs. The U.S. Attorney, Jim Trusty, AUSA, sought to have Gibbs held without bail, alleging Gibbs posed a threat to the community. The only

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4 *See* 18 U.S.C. § 3142(e) & (g)

evidence offered by Mr. Trusty, was an incident *null prosed* fifteen years prior to Gibbs' arrest, and his interpretation as to the meaning of letters written by Gibbs. Mr. Trusty did not present a single witness. When pressed by Judge Day, Mr. Trusty stated, over the sixty years of Mr. Gibbs' life we cannot fin so much as a speeding ticket.

Ms. Xinis had Dr. Moldauer interview Gibbs and presented his report. Dr. Moldauer, informed the court, Gibbs did not present a danger to himself or the community. That Gibbs' life prior to his arrest, was well ordered and all expatiations were well within reason and based on events which had real possibilities. The Bail Reform Act (BRA) addressed Congress' desire to protect the public from a specific category of individuals, arrested for a specific category of serious crimes, who were likely to pose a danger after arrest.[5] Gibbs presented two expert medical reports, by Dr. Moldauer, stating Gibbs was not a danger to the community. App. at 65-68.

Direct testimony by Dr. Moldauer, and Gibbs' wife and a friend (Oscar Garcia) certified they would use their homes as "bond" to secure Gibbs' release. Gibbs' wife testified the 1988 domestic incident was a result of Gibbs being placed on steroids to save his life (Sarcoidosis) and she did not understand the medication. That Gibbs had never been violent in more than thirty years, nor did she believe Gibbs presented a danger to herself or the community. *See* § 3142(f).

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5 *See* id. at 750-51.

The law does not assign the burden of proof on Gibbs. The U.S. Attorney *must* prove by clear and convincing evidence *(emphasis added)*, Gibbs posed a danger to the community. *United States v. Jessup*, 757 F.2d 378, 381-84 (1st Cir.1985).[6] Clear and convincing evidence means something more than preponderance of the evidence, and less than beyond a reasonable doubt. *Addington v. Texas*, 441 U.S.418, 431 (1979)

B. The Fourth Circuit's Decision Conflicts With The Interest of Congress and This Court's Decisions.

The Fourth Circuit, in allowing the district court's actions to stand, ignored the intent of Congress and disregarded the rulings of this Court. Congressional intent must be considered when determining whether a restriction on liberty constitutes punishment. *U.S. v. Salerno*, 481 U.S. 739, 748 (1987).

The U.S. Attorney failed and neglected to meet the preponderance standard set by Congress. The district court did not make a finding no conditions fo pretrial release could reasonably assure the safety of others and the community or articulate his findings in writing, 18 U.S.C. § 3142(i). The one incident, *null prosed* 1988, caused by steroids used to save Gibbs' life, cannot satisfy the required, "clear and convincing evidence," 18 U.S.C. § 3142(f).

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6 *See* 18 U.S.C. § 3142(f)(2)(B)

The facts standing alone are egregious. Judge (Magistrate) Day granted bail. Judge Bennett set aside Judge Day's well reasoned decision which was based soundly within the legal requirement and spirit of the Bail Reform Act. Gibbs was held for thirteen months. The only reason reasonably assignable to Gibbs' detention is, a desire to punish Gibbs, clearly violating the intent of Congress. *Kennedy v. Mendoza-Martinez,* 372 U.S. 144, 168-69 (1963).

Gibbs was deprived of his liberty and his property right as it applies to same, violates the Due Process Clause of the Fifth Amendment. The actions taken by the U.S. Attorney and the courts below is a distinctive shock to the conscience of every reasonable citizen and cannot be tolerated. *Rochin v. California*, 342 U.S. 165, 172 (1952), offends society's expectation of justice and fair play, *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976). Society and this Court have not authorized or sanctioned pre-trial detention as punishment. See *Bell v. Wolfish*, 441 U.S. 520, 535 (n.16 1979).

C. A Trial Judge May Not Recuse Himself And Every Judge Within A District, Nor May Recusal Be Ex Parte.

Jim Trusty, Asst US Attorney, stated in his response to the 4th Circuit, ... he was informed in a meeting with Judge Messitte, Chief Judge Faber would be assigned to Gibbs' case. App. at A-10-11. During an inquiry by Chief Judge Faber, Mr. Trusty stated, "I certainly don't have any objection to perhaps your Honor inquiring of Judge Motz if he is willing to issue a summary opinion on this.", App. at A-56-57.

D. The District Court Lacked Jurisdiction Because Judge Peter J. Messitte Did Not Recuse Himself From Gibbs' Case.

Gibbs was not advised the case was being transferred to Chief Judge David A. Faber, DCSDWVA. The assignment of Judge Faber was not entered on the docket, nor was an order entered assigning the case to Judge Faber, on or before November 7, 2003. This failure denied Gibbs an opportunity to have the reasons for the recusal placed on the record, and file an immediate appeal, if the facts warranted. Gibbs' first introduction to Chief Judge Faber was during his motion to relieve counsel and represent himself, the motion was granted.

Chief Judge Benson E. Legg, DCMD, assigned the case to Chief Judge Faber, DCSDWVA, the order was docketed on February 11, 2004 . App. at A-28.

On January 23, 2003. Judge Faber cancelled the motions hearing and ordered Gibbs to under a competency evaluation, This was based upon information Gibbs' witness list and as Chief Judge Faber stated, "And I agree with Mr. Trusty that the principal question here is whether he is capable of assisting properly in his defense, App. at A-52, particularly in view of the fact that he has insisted on representing himself in this case." App. at A-56.

Judge Faber Ordered the competency evaluation without reasonable cause, and without appointing counsel to represent Gibbs' interests. When Gibbs asked how and why his case was assigned to Judge Faber. Judge Faber stated,

> *"Well [i]t was assigned to me because all of the judges in the District of Maryland have recused themselves; and that's a decision that the judges make that you don't really have standing to question, Mr. Gibbs, as I understand the Rules (Emphases Added).* But the record should be clear as to why that was done, and I will ensure that it is, so if you do have any rights with regard to appeal of that decision that down the road you'll be able to assert them." App. at A-58.

Gibbs' right to a speedy trial is controlled by the Speedy Trial Act. The Act permits tolling of the statue when there is reasonable cause to believe the defendant cannot adequately communicate with his attorney in order to defend his/her rights. However, the act is not tolled for an unlimited period.

Chief Judge Faber ordered the competency examination though evidence did not exist which called Gibbs' competency in question. Gibbs conducted himself in every manner expected, and evidence was not provided to cause a reasonable belief Gibbs was suffering from a mental disease, defect. This was particular true because on December 15, 2003, Chief Judge Faber ruled Gibbs could represent himself.

Gibbs' trial was to begin on February 3, 2004. Judge Faber having ordered the competency examination without reasonable cause delayed Gibbs trial until September 9, 2004, *See* 18 U.S.C. § 3161. A delay of more than six months, caused by Judge Faber having

failed to appoint Gibbs counsel prior to sending Gibbs for an evaluation. Granting an extension because Gibbs was placed in solitary confinement for ten days and thereafter invoked his Miranda rights, *See* 18 U.S.C. §§ 4241 & 4247

1. This Court Should Reclaim Its Authority.

The Fourth Circuit's per curium opinion, in light of Supreme Court precedent and disapproval of unethical conduct, is extraordinary. It is made more so by the fact the 4th Circuit denied Gibbs' motion for removal. The motion was to address the issue of an unsupported allegation: Gibbs made a threat against, Judge J. Frederick Motz, husband of Dianna Gibbons Motz, 4th Circuit Court judge. Gibbs case was assigned to Judge Peter J. Messitte. Paula Xinis, Esq., was assigned to represent Gibbs. The U.S. Attorney, Jim Trusty, AUSA, sought to have Gibbs held without bail, alleging Gibbs posed a threat to the community. The only evidence by Mr. Trusty, was an incident null prosed fifteen years prior to Gibbs' arrest. Mr. Trusty did not have a witness. When pressed by Judge Day, Mr. Trusty stated, *"over the sixty years of Mr. Gibbs. Life we cannot find so much as a speeding ticket."* Ms. Xinis had Dr. Moldauer interview Gibbs and presented his report. Dr. Moldauer informed the court, Gibbs did not present a danger to himself or the community.

III. The Charge of Making A Threat Requires Specific Intent and A Reasonable Recipient And Specific Intent Goes To The Belief Of The Sender Not The Mailing.

A. The Fourth Circuit's Decision Conflicts With the Decisions of the Sixth And Ninth Circuits.

"We recognize that there is a split among the circuits as to whether section 875(c) is a specific intent crime or a general intent crime," *U.S. v. Darby,* 37 F.3d 1059, 1064 (4th Cir. 1994). The Ninth Circuit held, section 875(c), requires specific intent, relying on an earlier Ninth Circuit opinion, *Seeber v. United States*, 329 F.2d 572 (9th Cir. 1964).[7] Thereby, requiring the government to prove beyond a reasonable doubt, a defendant intended his/her communication to be received as a threat. *United States v. Twine*, 853 F.2d 676 (9th Cir. 1988). The court reached its conclusion by a reasoned analysis to 18 U.S.C. § 876, which prohibits, inter alia, using the United States mail, to communicate a threat. The court drew from the fact specific intent is required for conviction under section 876. *United States v. Sirhan*, 504 F.2d 818, 819 (9th Cir. 1974). At the opposite end of the legal spectrum, the Sixth Circuit, has held section 975(c) requires only general intent. *United States v. DeAndino*, 958 F.2d 146 (6th Cir.), cert. denied, ____ U.S. ____(1992). The Sixth Circuit determined the presumption; if a statute did require specific intent, courts

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7 See *Twain* at 679-80.

often hold only general intent is needed. The Fourth Circuit held, the same presumption existed in its circuit. *Darby*, at 1066.

The Fourth Circuit acknowledged their interpretation of 18 U.S.C. § 876 was similar to the *Sirhan* court. *United States v. Chatman*, 584 F.2d 1358 (4th Cir. 1978). The court held, § 876 required a defendant knowingly deposited a threatening letter in the mail. Id. at 1360-61 (citing *Sirhan*, 504 F.2d at 819). First blush would seem to support the Fourth Circuit being in line with the Ninth Circuit. However, after careful analysis, the ruling as to § 876, is at odds.

The Ninth Circuit requires the government prove beyond a reasonable doubt a defendant intended his/her communication to be received as a threat. While the Fourth Circuit has ruled, for a conviction it is only required a defendant knowingly deposited the threatening communication in the mails.

This Court must provide unanimity by eliminating the split between the circuits as whether specific intent or general intent is required to be proven under § 875(c). And, whether a charge under § 876, requires specific intent as to the communicated threat being intended as a threat or the knowing mailing of a threat.

B. This Issue Goes To The Heart Of The Democratic Process And The Fifth Amendment.

The U.S. Attorney having possession of and using information contained in Gibbs' case files drew the wrong conclusion. The U.S. Attorney was not privileged

to medical reports and other information as was the Department of Labor. The U.S. Attorney used the files to obtain information concerning the suit filed in New York Supreme Court, Putnam County. The case, *Gibbs v. Brady* Docket No. 03/298,, provided the U.S. Attorney information he could not obtain otherwise. Prior to obtaining Gibbs' files, the U.S. Attorney was not familiar with the art case having been defended by the Justice Department, or Gibbs had a pending motions concerning the Justice Department.[8]

Gibbs was arrested on August 22, 2003. The F.B.I., the agents seized from Gibbs, two (2) case files and other materials: *Gibbs v. Department of Labor and Gibbs v. Brady;* Books: Smithsonian & Powell, *Homecoming, The Art and Life of William H. Johnson* [A.64-65]; Turner & Daily, *William H. Johnson, Truth Be Told* [A.47-58]; David Driskell, *The Other Side of Color - The William "Bill" and Camille Cosby Art Collection*; Video Tape - Gibbs' appearances on C.B.S. Sunday Morning, Black Entertainment Television (B.E.T), .A.B.C. News New York City, C.B.S. News Florence, South Carolina, N.B.C. News Savannah, Georgia; Correspondence between Gibbs and C.B.S. 60 Minutes, and A.B.C. 20/20 News Programs.

8

The Justice Department and F.B.I., were aware the Smithsonian's sale of this book, post cards, calendars, tee-shirts, coffee mugs, mouse pads, etc., depicting Johnson Artwork, violated U.S. Copyright Law, 17 U.S.C. § 506 (Criminal Violation). Upon inquiry, the New York Surrogate Court, no case existed relinquishing the copyright to the William H. Johnson artwork.

1. The Fourth Circuit Should Not Have Heard This Case.

Judge J. Frederick Motz was assigned to the civil case, which Chief Judge Legg had Gibbs arrested. The U.S. Attorney made assertions, that Gibbs had made threats against Judge J. Frederick Motz.

The U.S. Attorney used this allegation and the mistake by Chief Judge Legg, to force a guilty plea. Given the acts listed herein, Gibbs knew a trial would have resulted in a minimum of five years imprisonment, even though the indictment was defective. It has been established that Judge J. Frederick Motz is the husband of Diana Gibbons Motz; 4th Circuit Court Judge.

Gibbs', appeal brief was thirty pages and the appendix consisted of one-hundred and seventy three, exhibits, a motion to remove Gibbs' case from the 4th Circuit and three motions to stay Gibbs' conviction.

The U.S. Attorney did not file a reply brief. The 4th Circuit ordered a reply be filed. The U.S. Attorney filed a one paragraph letter. The 4th Circuit issued a second order, directing the U.S. Attorney to file a reply addressing each issue Gibbs raised in his brief. The U.S. Attorney filed a three paragraph letter. App. at A-7-13.

By per curium opinion, the 4th Circuit affirmed Gibbs' conviction-entered as a guilty plea.

This Court must address the issue of whether a defendant has a right to defend against allegations concerning a threat against a judge. And, given the acts committed against Gibbs; which factor(s) existed upon which a conviction could be affirmed, and whether the

facts supported and/or required removal to avoid the appearance of bias. The acts committed against Gibbs, if committed by a citizen, would be defined as a crime. May the judiciary be self aggrandized as exempt from the law. Do we, on behalf of the judiciary, dissolve the glue that bind crime to the identifying criminal.

C. This Issue Is Of Seminal Importance Because The Courts Were Used To Conceal Criminal Behavior.

Gibbs was arrested on August 22, 2003, pursuant to a warrant alleging Gibbs violated 18 U.S.C. § 876, by mailing documents to the U.S. Courthouse, Baltimore, MD. When it was discovered Gibbs did not use the mail, the records were changed and Gibbs' arrest warrant was stolen from his legal papers.

Gibbs' arrest was based on an arrest warrant which alleged, that Gibbs mailed a threat. The treat being determined by Chief Judge Legg, was based on exhibits Gibbs appended to his motion for temporary restraining order.

The warrant issued by the judge contained an affidavit signed by an F.B.I. agent, who certified Gibbs mailed motion to the court, constituting a crime pursuant to 18 U.S. C. § 876. *The F.B.I. agent committed perjury.*

D. Special Considerations

1. Courts Must Not Be The Obstacle Preventing Black Attorneys From Litigating Billion Dollar Cases.

Gibbs is a Black attorney, whose only expectation is: the benefits established by law. The judicial system must not be segregated by the amount of the law suit. Gibbs must have the protection of the courts whether Gibbs is litigating a million dollar case of a billion dollar case.

Though unfortunate, the perception is, if a Black attorney pleas a sum exceeding a billion dollars; the case is problematic. And, when defendants make unsupported allegation of misconduct and/or mental instability, unsupported allegations are given greater credibility.

Black attorneys in general, and Black Americans in particular must be assimilated into a [l]egitimate America. This case exists because a small segment of our society use race, position and power to camouflage illegal profit and improper control over Black Folk.

Art is the highest form of a society, those who control the art of a society, control the society. Artists show citizens the possibilities of life by visually expanding the parameters of thought. One of Hitler's first acts, was the total destruction of artists and their art. The world was told of the Holocaust. The horrors were not front and center on canvas, but rater hidden on the back pages of newspapers. One must visit the Holocaust Museum to understand. One must hear Billie (Lady Day) Holiday, sing "*Strange Fruit*" hanging from poplar trees; Blacks being lynched, or see *Emmitt Teal*, lying in his coffin, to understand the history.

For ten years, Gibbs litigated to recover art stolen from William H. Johnson and other artists. The case is problematic, not because Gibbs lack legal skills or an understanding of the law. But, rather because Gibbs is forced to litigate a civil case while in the mist of an *organized criminal enterprise*. A criminal enterprise dedicated to protecting stolen art, with an estimated value over two billion dollars, and art stolen from the Barnes Collection at Lincoln University. The estimated value of the Barnes Collection, three billion dollars.

The past ten years also bear witness to the decline of Historical Black Colleges and Universities (HBCUs). The art missing from several of these school, may be hundreds of million of dollars. The number of schools have declined from seventy to about sixty. The endowment for sixty schools, is estimated to be one billion seven hundred million. The endowment for Harvard University is seventeen billion dollars.[9]

This Court must view the facts of this case and send a clear and concise message. A message which will ensure Black attorneys engaging in similar litigation, will not suffer the same devastation as Gibbs.

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9 Gibbs cited this statistic in 2000, today the figure is twenty three billion. HBCUs are being allowed to be looted by criminals who pose as black....

CONCLUSION

This petition for a writ of certiorari should be granted.

WHEREFORE, Gibbs, respectfully request Gibbs' Guilty Plea be Reversed, this case be remanded and a chief circuit court judge,[10] appointed to determine the extent a *criminal enterprise* and the Justice Department, used criminal means, to have Gibbs arrested in order to defeat the civil art case filed pursuant to 18 U.S.C. § 1864; *Racketeering and Influence Corrupt Organization* (RICO).

Respectfully submitted,

M. Eugene Gibbs, Esq., Pro-se
4257 Monterey Drive
Florence, South Carolina 29501
(843) 610-0674

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10 *and Special Prosecutor*

A-1

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

FILED

August 22, 2006

No. 04-4760
CR-03-400-PJM

UNITED STATES OF AMERICA
Plaintiff - Appellee

v.

MELVIN EUGENE GIBBS
Defendant - Appellant

On Petition for Rehearing and Rehearing En Banc

Appellant's petition for rehearing and rehearing en banc was submitted to this Court. As no member of this Court or the panel requested a poll on the petition for rehearing en banc, and

As the panel considered the petition for rehearing and is of the opinion that it should be denied,

IT IS ORDERED that the petition for rehearing and rehearing en banc is denied.

Entered for a panel composed of Judge Wilkinson, Judge Shedd, and Judge Duncan.

For the Court,

/s/ Patricia S. Connor
CLERK

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 04-4760

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

MELVIN EUGENE GIBBS,

Defendant - Appellant.

Appeal from the United States District Court for the District of Maryland, at Greenbelt. David A. Faber, Chief District Judge. (CR-03-400-PJM)

Submitted: May 31, 2006 Decided: June 14, 2006

Before WILKINSON, SHEDD, and DUNCAN, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Melvin Eugene Gibbs, Appellant Pro Se. James M. Trusty, OFFICE OF THE UNITED STATES ATTORNEY, Greenbelt, Maryland, for Appellee.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

PER CURIAM:

Melvin Eugene Gibbs pled guilty to one count of mailing threatening communications, in violation of 18 U.S.C.A. § 876 (West Supp. 2005). Gibbs is an attorney and is proceeding pro se on appeal. On appeal, Gibbs raises claims of whether it was proper for the district court to recuse all District of Maryland judges and appoint a Southern District of West Virginia judge; whether the district court erred in ordering a competency hearing to determine if Gibbs was competent to stand trial and serve as his own counsel; whether the delay caused by the competency examination and hearing resulted in a violation of the Speedy Trial Act; whether it was error for the Government to use case files relating to Gibbs' other cases; whether Gibbs was forced to plead guilty by requiring a competency hearing, denying him medical care in detention, and due to unspecified risks to the lives of himself and his family based on Gibbs' prosecution of a civil case; whether the indictment sufficiently charged specific intent to mail a threatening communication; whether the prosecution for mailing a threatening communication violated Gibbs' First Amendment rights; whether the district court erred in denying Gibbs bail; and whether ineffective assistance of counsel caused Gibbs to plead guilty.

We have reviewed Gibbs' brief on appeal, the appendix submitted by Gibbs, the Government's letter in reply to Gibbs' brief, and the record, which included transcripts of the relevant

proceedings. After a careful review of the claims asserted by Gibbs on appeal and the record before us, we affirm Gibbs' judgment. We grant Gibbs' motion to file a reply brief, but deny all his pending motions for expedited treatment and to stay his conviction. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED

A-5

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 04-4760

FILED
February 9, 2006

UNITED STATES OF AMERICA,

Plaintiff - Appellee

versus

MELVIN EUGENE GIBBS,

Defendant - Appellant.

ORDER

After reviewing the Government/s letter dated September 6, 2005, the Court directs the Government to file a fully responsive informal brief addressing the claims associated with Gibbs' conviction and raised in his informal brief on appeal. The Appellee's brief is due thirty days from the date of this order.

FOR THE COURT,

Patricia S. Connor

/s/ patricia S. Connor
CLERK

U.S. Department of Justice

United States Attorney
District of Maryland
Southern Division

Rod J. Rosenstein
United States Attorney

400 United States Courthouse
301-344-4433
6500 Cherrywood Lane
Greenbelt, MD 20770-1249
301-344-4338
FAX 301-344-4516

James M. Trusty
Assistant United States Attorney

September 6, 2005

Clerk
U.S. Court of Appeals, Fourth Circuit
U.S. Courthouse Annex, 5th Floor
1100 East Main Street
Richmond, Virginia 23219

Re: United States of America v. Melvin Eugene Gibbs. No. 04-4760

Dear Sir:

By this letter, the United States respectfully requests that this Honorable Court affirm the defendant's conviction after guilty plea. The defendant continues to utilize court pleadings as an avenue for proclaiming the existence of a conspiracy to steal art. His informal brief makes bald accusations of judicial misconduct without factual foundation and challenges to various pre-plea proceedings without any citation to legal authority, except in his challenge to the sufficiency of the indictment, which was properly rejected below.

Sincerely,

Rod J. Rosenstein
United State Attorney

By: *James M. Trusty*
James M. Trusty
Assistant United States Attorney

cc: Melvin Eugene Gibbs
12401 Venice Place
Silver Spring, MD 20904

U.S. Department of Justice

United States Attorney
District of Maryland
Southern Division

Rod J. Rosenstein
United States Attorney

400 United States Courthouse
301-344-4433
6500 Cherrywood Lane
Greenbelt, MD 20770-1249
301-344-4338
FAX 301-344-4516

James M. Trusty
Assistant United States Attorney

March 8, 2006

Clerk
U.S. Court of Appeals, Fourth Circuit
U.S. Courthouse Annex, 5th Floor
1100 East Main Street
Richmond, Virginia 23219

Re: United States of America v. Melvin Eugene Gibbs. No. 04-4760

Dear Sir:

By this letter, the United States respectfully requests that this Honorable Court affirm the defendant's conviction after guilty plea. The defendant continues to utilize court pleadings as an avenue for proclaiming the existence of a conspiracy to steal art. The bulk of his informal brief discusses civil proceedings that apparently provided motivation for Mr. Gibbs to issue threats against various officials, to include the Chief Judge for the District of Maryland. Due to that particular threat, Judge Peter J. Messitte determined it would be appropriate to have a District Court Judge from the District of West Virginia preside over the case. The fact that a case was initially assigned

to a judge before whom the defendant never appeared does not generate a basis for appeal just because an administrative decision was made to reassign the matter. The defendant, who pleaded guilty, cites no legal authority for his misplaced conclusion that "reversal must be automatic." The second set of arguments raised by the defendant is that the court improperly ordered a competency evaluation of Mr. Gibbs. In point of fact, Judge Faber only ordered the competency examination after repeated colloquy with the defendant, conversations in which the defendant continuously spoke of the art theft conspiracy that permeates his pleadings. Mr. Gibbs had recently filed a motion claiming a need to present testimony of Hilary Clinton, Bill Cosby, Dick Cheney, and various other officials that would help him establish the existence of a massive conspiracy designed to steal artwork from African-Americans. The trial court repeatedly made efforts to assist Mr. Gibbs in divorcing collateral issues from the pending threatening communication prosecution, without success. Ultimately, Dr. William Ryan determined that the defendant suffered from Delusional Disorder, Persecutory Type, but that he was competent to stand trial. (Def. Appx. at 95). The record amply supported Judge Faber's determination that a competency evaluation was appropriate. The defendant continues to claim that a seizure of his personal documents constituted a violation of his attorney-client privilege. That privilege is apparently based upon the notion that Mr. Gibbs' legal training creates a privileged status for documents he created without other attorney involvement. He cites no authority for this proposition, and the Court should deny this claim. The documents seized constituted evidence pertaining to his responsibility for mailing threatening communications and his motivation in doing so. The defendant's informal brief renews his challenge to the sufficiency of the indictment. In attacking the indictment's failure to put forth a specific intent crime, the defendant ignores the allegation that he "did knowingly cause to be delivered by

the Postal Service" [a threatening communication]. Thus, the specific intent to mail the communication was properly alleged and this basis for appeal should be rejected as well. It is noteworthy, in this respect, that the defendant pleaded guilty to mailing a threatening communication after the Court specifically advised him of the elements of the offense, to include a specific intent to mail. To the extent that the defendant had an ability to claim a defect in the indictment, the guilty plea would constitute a waiver.[1] The defendant's claim that his First Amendment rights were violated is not supported by any legal basis and is not even argued in the informal brief. The defendant renews his claim that he should have been released on bail. Lengthy and repeated bond review hearings were held by the Magistrate Judge and District Judge. The Court properly found that the defendant posed a danger to the community, despite being presented with psychiatric evaluation information put forth by a forensic mental health expert. The defendant ultimately pleaded guilty and received more than 12 months of incarceration. His challenge is misplaced on the merits and moot. The defendant's final claim is difficult to comprehend. He suggests that ineffective assistance of stand-by counsel contributed to his guilty plea. He does not claim innocence, nor does he indicate how "competent" stand-by counsel could have assisted him. This baseless claim should be denied.

Sincerely,

---

1 The defendant filed an Appendix of Defendant without consulting the government in accord with the customary practice of filing a Joint Appendix. The Appendix of Defendant did not include the transcript of the guilty plea.

Rod J. Rosenstein
United State Attorney

By: *James M. Trusty*
James M. Trusty
Assistant United States Attorney

cc: Melvin Eugene Gibbs
12401 Venice Place
Silver Spring, MD 20904

United States District Court
District of Maryland

UNITED STATES OF AMERICA **JUDGMENT IN A CRIMINAL CASE**

(For Offenses Committed on or After November 1, 1987)

v.

Case Number: PJM-03-0400
USM Numbers: 37948-037

Melvin Eugene Gibbs, Pro Se

Defendant's Stand-By Attorney: Anthony D. Martin
Assistant U.S. Attorney: James M. Trusty

THE DEFENDANT:

[x] pleaded guilty to count (1) One of the Indictment

[ ] pleaded nolo contendere to count(s) ____, which was accepted by the court.

[ ] was found guilty on count(s) _____after a plea of not guilty.

Title & Section	**Nature of Offense**
Title 18, U. S. Code, Section 876	Mailing Threatening Communication

Concluded	**Number(s)**
11-18-2002	1

The defendant is adjudged guilty of the offenses listed above and sentenced as provided in pages 2 through 6 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

[ ] The defendant has been found not guilty on count(s) _____

[x] Counts 2,3,4, and 5 of the Indictment are dismissed on the motion of the United States.

IT IS FURTHER ORDERED that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid.

September 7, 2004
Date of Imposition of Judgment

David A. Faber
United States District Judge

Name of Court Reporter: Tracy Dunlap

APPEAL, Assign_to,-J_Faber, CLOSED, CUSTAPP

U.S. District Court
District of Maryland (Greenbelt)
CRIMINAL DOCKET FOR CASE #: 8:03-cr.-00400-PJM-ALL

Case title: USA v. Gibbs
Other conrt case number(s): None **Date Filed:** 09/08/03
Magistrate judge case number(s): None

Assigned to: Judge Peter J. Messitte
Referred to:

Defendant(s)

Melvin Eugene Gibbs (1) represented by Anthony D Martin
TERMINATED: 09/07/2004
Law Office of
Anthony D Martin
7841 Belle Point Dr
Greenbelt, MD 20770
13012203700
Fax: 13012200791

LEAD ATTORNEY
AITORNEY TO BE NOTICED
Designation: CJA Appointment
Paula Xinis
Office of the Federal Public Defender
6411 Ivy Ln Ste 710
Greenbelt, MD 20770
13013440600
Fax: 13013440019 *TERMINATED: 02/13/2004 LEAD ATTORNEY*
ATTORNEY TO BE NOTICED
Designation: Public Defender or Community Defender Appointment
Pending Counts -
Disposition

18:876 Mailing Threatening
Communication (1)
12 Months and 17 Days Imprisonment;
3 Years Supervised Release with
Conditions and .00 Special Assessment

18:876 Mailing Threatening
Communication
(2)
Dismissed

9/15/04

District of Mary land (CM/ECF Live) - Docket Report

18:875 Interstate Threatening Communication
(3-5) Dismissed

Highest Offense Level (Opening) - Felony

Terminated Counts
Disposition None

Highest Offense Level (Terminated) - None

Complaints
Disposition
18:875C.F Interstate Communications
Threats

Movant(s)

Marvin D. Morrison

Plaintiff
USA
represented by **James M Trusty**
Office of the US Attorney
6500 Cherrywood Ln Ste 400 Greenbelt, MD 20770-1249
3013444433
Fax: 13013444518
Email: James.Trusty@USDOJ.GOV
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

9/15/04

Filing Date	#	Docket Text
08/21 2003	1	COMPLAINT as to Melvin Eugene Gibbs (1). Attachment 1: Affidavit in support of Criminal Complaint. (pkf, Deputy Clerk) [8:03-mj-0291I-JKS] (Entered: 08/22,/2003)
08/21 2003	2	Arrest Warrant Issued as to Melvin Eugene Gibbs. (pkf, Deputy Clerk)[8:03-mj-029II-JKS] (Entered: 08/22/2003)
08/22 2003		Initial Appearance as to Melvin Eugene Gibbs (Defendant informed of Rights.) held before Judge Jillyn K. Schulze. (Tape *#EIR* Fosbrook.) (pkf, Deputy Clerk)[8:03-mj-029II-JKS] (Entered: 08/22/2003)
08/22 2003	3	CJA 23 Financial Affidavit by Melvin Eugene Gibbs (pkf, Deputy Clerk)[8 :03-mj-02911-JKS] (Entered: 08/22/2003)
08/22 2003	4	ORDER APPOINTING FEDERAL PUBLIC DEFENDER Paula Xinis for Melvin Eugene Gibbs appointed .. Signed by Judge Jillyn K. Schulze on 8/22/03. (pkf, Deputy C1erk)[8:03-mj-029II-JKS] (Entered: 08/22/2003)
08/22 2003	5	ORDER OF TEMPORARY DETENTION as to Melvin Eugene Gibbs. Signed by Judge Jillyn K. Schulze on 8/22/03. (pkf, Deputy

		Clerk)[8:03-mj-02911-JKS] (Entered: 08/22/2003)
08/26 2003		Detention Hearing continue to 8/27/03 at 4:00 pm as to Melvin Eugene Gibbs held before Judge Charles B. Day. (ER: Rita Sigona.) (rms, Deputy Clerk)[8:03-mj-0291I-JKS] (Entered: 08/27/2003)
08/27 2003		Detention Hearing as to Melvin Eugene Gibbs held before Judge Charles B. Day. (ER: Rita Sigona.) (rms, Deputy Clerk)[8:03-mj-0291I-JKS] (Entered: 08/27/2003)
08/27 2003	6	ORDER OF DETENTION as to Melvin Eugene Gibbs. Signed by Judge Charles B. Day on 08/27/2003. (rms, Deputy Clerk)[8:03-mj-02911-JKS] (Entered: 08/27/20(3)
08/27 2003	7	!\rrest Warrant Returned Executed on 8/22/03. as to Melvin Eugene Gibbs. (pkf, Deputy Clerk)[8:03-mj-02911-JKS] (Entered: 09/04/2003)
09/02 2003	8	NOTICE OF ATTORNEY APPEARANCE: PaulaXinis appearing for Melvin Eugene Gibbs (pkf, Deputy Clerk)[8:03-mj-02911-JKS] (Entered: 09/04/2003)
09/08 2003	9	fNDIC'-MENT as to Melvin Eugene Gibbs as to Counts 1-2,3-5 (ajh,

		Deputy Clerk) (Entered: 09/09/2003)
09/16 2003		Arraignment as to Melvin Eugene Gibbs (1) Count 1-2,3-5 held on 9/16/2003, Plea entered by Melvin Eugene Gibbs Not Guilty on all counts. held before Judge Charles;!3. Day. (Tape #ER: Rita Sigona.) (rms, Deputy Clerk) (Entered: 09/16/2003)
09/16 2003		Bond Hearing as to Melvin Eugene Gibbs held before Judge Charles B. Day. (ER: Sigona.) (rms, Deputy Clerk) (Entered: 09/16/2003)
09/17 2003		Bond Hearing as to Melvin Eugene Gibbs held before Judge Charles B. Day. (ER: Rita Sigona.) (rms, Deputy Clerk) (Entered: 09/17/2003)
09/17 2003	10	ORDER Setting Conditions of Release as to Melvin Eugene Gibbs .. Signed by Judge Charles B. Day on 09/17/2003. (rms, Deputy Clerk) (Entered: 09/17/2003)
09/17 2003	11	NOTICE OF APPEAL of Conditions of Release by USA as to Melvin Eugene Gibbs as to [10] Order Setting Conditions of Release (lad3, Deputy Clerk) (Entered:

		09/17/2003)
09/17 2003		Hearing on Appeal from Magistrate Judge Decision (paper #11) as to Melvin Eugene Gibbs held before Judge Richard D Bennett. (Court Reporter Lisa Bankins) (hbm, Deputy Clerk) (Entered: 09/18/2003)
09/18 2003	12	ORDER Granting Motion of the Government for Stay of Order of Release and Staying the release order entered by Magistrate Judge Charles B. Day as to Melvin Eugene Gibbs. Signed by Judge Richard D Bennett on 9/17/2003. (elm 9/18/03lad) (lad3, Deputy Clerk) (Entered: 09/18/2003)
09/22 2003	13	TRANSCRIPT of Proceedings as to Melvin Eugene Gibbs held on August 22,26,27,2003 & September 16,2003 before Judge Schulze and Judge Day. Court Reporter: Compuscribe. (FILED SEP ARA TEL Y) (pkf, Deputy Clerk) Modi tied on 9/23/2003 (pkf, Deputy Clerk). (Entered: 09/23/2003)
09/23 2003		Detention Hearing as to Melvin Eugene Gibbs held before Judge Richard D Bennett. (Court Reporter Lisa Bankins) (hbm, Deputy Clerk) (Entered: 09/23/2003)
09/25 2003	14	Correspondence to Counsel from the Honorable Richard D. Bennett Re: Mental Competency Evaluation (e/m 9/25/03slp) (lad3, Deputy

		Clerk) (Entered: 09/26,'2003)
09/25 /2003	15	ORDER granting motion of tile government to revoke the 9/17/03 order releasing defendant, revoking the 9/17/03 order and committing the defendant to the Custody of the Attorney General for confinement as to Melvin Eugene Gibbs. Signed by Judge Richard D Bennett on 9/24/2003. (c/m 9/25/03slp) (lad3, Deputy Clerk) (Entered: 09/26/2003)
10/03 2003	16	MOTION to Suppress Statements by Melvin Eugene Gibbs. Responses due by 10/20/2003 (elt, Deputy Clerk) (Entered: 10/03/2003)
10/17 2003	17	Correspondence to Counsel RE: Trial Date (c/m 1 0/20/03 lad) (lad3, Deputy Clerk) (Entered: 10/20/2003)
11/06 2003	18	MOTION to Withdraw as Attorney by Paula Xinis. by Melvin Eugene Gibbs. Responses due by 11/24/2003 (eIt, Deputy Clerk) (Entered: 11/07/2003)
11/20 2003	19	ORDER scheduling pretrial motions hearing and directing all pretrial motions be filed no later than 12/9/03 as to Melvin Eugene Gibbs. Signed by Judge David A. Faber on 11/20/2003. *(cis* c/m lI/20/03 et)

		(elt, Deputy Clerk) (Entered: 11/20/2003)
12/ 15/ 2003		Motion Hearing as to Melvin Eugene Gibbs re [18] MOTION to Withdraw as Attorney by Paula Xinis held before Judge David A. Faber. (Reporter: Theresa Harvey) (mdw, Deputy Clerk) (Entered: 12/15/2003)
12/ 15/ 2003		ORAL ORDER granting [18] Motion to Withdraw as Attorney by Judge DAVID A. FABER on 12/15/03. (mdw, Deputy Clerk) (Entered: 12/15/2003)
12/ 15/ 2003	20	ORDER as to Melvin Eugene Gibbs granting [18] MOTION to Withdraw as Attorney by Paula Xinis; plaintiff to proceed pro se; SETTING schedule. (signed by Judge David A. Faber on 12/15/03. (cags, Deputy Clerk) (Entered: 12/15/2003)
12/ 30 2003	21	Proposed Voir Dire by USA as to Melvin Eugene Gibbs (elt, Deputy Clerk) (Entered: 1213I/2003)
12/ 30/ 2003	22	RESPONSE by USA as to Melvin Eugene Gibbs re [16] MOTION to Suppress Statements Replies due by I/13/2004. (elt, Deputy Clerk) (Entered: 12/31/2003)
01/	23	Amended Discovery (elt, Deputy Clerk) (Entered: 01/13/2004)
01/	24	Opposition to [21] Proposed Voir Dire

14/ 04		Questions, Evidence and Witness Lists and [22] Response to Motion to Suppress (lad3, Deputy order releasing defendant, revoking the 9/17/03 order and committing the defendant to the Custody of the Attorney General for confinement as to Melvin Eugene Gibbs. Signed by Judge Richard D Bennett on 9/24/2003. (c/m 9/25/03slp) (lad3, Deputy Clerk) (Entered: 09/26/2003)
10/03/ 2003	16	MOTION to Suppress Statements by Melvin Eugene Gibbs. Responses due by 10/20/2003 (elt, Deputy Clerk) (Entered: 10/03/2003)
10/17/ 2003	17	Correspondence to Counsel RE: Trial Date (c/m 1 0/20/03 lad) (lad3, Deputy Clerk) (Entered: 10/20/2003)
11/06/ 2003	18	MOTION to Withdraw as Attorney by Paula Xinis. by Melvin Eugene Gibbs. Responses due by 11/24/2003 (elt, Deputy Clerk) (Entered: 11/07/2003)
11/20/ 2003	19	ORDER scheduling pretrial motions hearing and directing all pretrial motions be filed no later than 12/9/03 as to Melvin Eugene Gibbs. Signed by Judge David A. Faber on 11/20/2003. *(cis* c/m lI/20/03 et)

		(elt, Deputy Clerk) (Entered: 11/20/2003)
12/15/03		Motion Hearing as to Melvin Eugene Gibbs re [18] MOTION to Withdraw as Attorney by Paula Xinis held before Judge David A. Faber. (Reporter: Theresa Harvey) (mdw, Deputy Clerk) (Entered: 12/15/2003)
12/15/03		ORAL ORDER granting [18] Motion to Withdraw as Attorney by Judge DAVID A. FABER on 12/15/03. (mdw, Deputy Clerk) (Entered: 12/15/2003)
12/15/03	20	ORDER as to Melvin Eugene Gibbs granting [18] MOTION to Withdraw as Attorney by Paula Xinis; plaintiff to proceed pro se; SETTING schedule. (signed by Judge David A. Faber on 12/15/03. (cags, Deputy Clerk) (Entered: 12/15/2003)
12/30/03	21	Proposed Voir Dire by USA as to Melvin Eugene Gibbs (elt, Deputy Clerk) (Entered: 1213I/2003)
12/30/03	22	RESPONSE by USA as to Melvin Eugene Gibbs re [16] MOTION to Suppress Statements Replies due by I/13/2004. (elt, Deputy Clerk) (Entered: 12/31/2003)

01/ 12/ 04	23	Amended Discovery (elt, Deputy Clerk) (Entered: 01/13/2004)
01/ 14/ 04	24	Opposition to [21] Proposed Voir Dire Questions, Evidence and Witness Lists and [22] Response to Motion to Suppress (lad3, Deputy Clerk) (Entered: 01/20/2004)
01/16/ 2004	25	Consolidated RESPONSE to Defendant's Miscellaneous Pro-Se Pleadings (c/s) (lad3, Deputy Clerk) (Entered: 01/20/2004)
01/23/ 2004		Motions Hearing as to Melvin Eugene Gibbs held before Judge David A. Farber. (Court Reporter Theresa Harvey (S.Dist. WV) (hbm, Deputy Clerk) Modified on 1/23/2004 (hbm, Deputy Clerk). (Entered: 01/23/2004)
01/23/ 2004		ORAL Motion and ORAL ORDER by the Court as to Melvin Eugene Gibbs POSTPONING trial date and directing that defendant receive a psychiatric or psychological examination. Signed by Judge David A. Faber on 1/23/04. (hbm, Deputy Clerk) (Entered: 01/23/2004)
01/23/ 2004	26	HEARING EXHIBIT LIST by Melvin Eugene Gibbs. (amf, Deputy Clerk) (Entered: 01/23/2004)

01/23/2004	27	ORDER sealing the Ex-Parte Petition of Defendant for Issuance of Subpoenas as to Melvin Eugene Gibbs. Signed by Judge David A. Faber on 1/23/04. (amf, Deputy Clerk) (Entered: 01/23/2004)
01/23/2004	28	Sealed Document. (amf, Deputy Clerk) (Entered: 01/23/2004)
01/23/2004	29	ORDER that Defendant be given a psychiatric or psychological examination and continuing the trial date in this case as to Melvin Eugene Gibbs. Signed by Judge David A. Faber on 1/23/04. (c/m at) (amf, Deputy Clerk) (Entered: 01/23/2004)
01/23/2004	30	ORDER directing that document 4 (Gibbs' Emergency Habeas Corpus Amended), 5 (Improper Recusal) and 6 (Motion for Reconsideration) filed in PJM-03-3550 be re-docketed in this case as to Melvin Eugene Gibbs. Signed by Judge David A. Faber on 1/21/2004. (c/m 1/27/04 lad) (lad3, Deputy Clerk) (Entered: 01/27/2004)
01/23/2004	31	MOTION to Dismiss Indictment, to Compel, for Recusal, for Bail and to Suppress by Melvin Eugene Gibbs. Responses due by 2/9/2004 (lad3, Deputy Clerk) (Entered: 01/29/2004)
01/23/2004	32	Emergency Amended Petition for Writ of

		Habeas Corpus (paper no. 4 in PJM-03-3550) (lad3, Deputy Clerk) (Entered: 01/29/2004)
01/23/2004	33	Correspondence from Melvin Gibbs Re: Improper Recusal (paper no. Sin PJM-03-3550) (lad3, Deputy Clerk) (Entered: 01/29/2004)
01/23/2004	34	MOTION for Reconsideration by Melvin Eugene Gibbs. (paper no. 6 in PJM-03-3550) Responses due by *2/9/2004* (lad3, Deputy Clerk) (Entered: 01/29/2004)
02/04/2004	35	ORDER Re-appointing Paula Xinis, Office of the Federal Public Defender as counsel of record for Melvin Eugene Gibbs. Signed by United States District Judge David A. Faber on 2/4/04 *(elm* 2/4/04 zf) (zf, Deputy Clerk) (Entered: *02/04/2004)*
02/05/2004	36	TRANSCRIPT of Proceedings as to Melvin Eugene Gibbs held on January 23,2004 before Judge David A. Faber, United States District Judge in Baltimore, WV. Court Reporter: Teresa-L Harvey (FILED SEP ARATEL Y) (zf, Deputy Clerk) (Entered: *02/06/2004)*
02/09/2004	37	Second Consolidated RESPONSE to Defendant's Miscellaneous Pro-Se Pleadings *(cis)* (zf, Deputy Clerk) (Entered: *02/09/2004)*
02/10/2004	38	ORDER Directing Clerk to docket letter as to Melvin Eugene Gibbs as therein and set forth. Signed by Judge

		David A. Faber on *219/04* *(c/m* 2/1 *0104* zf) ((Entered: 02/1 *012004)*
02/10/ 2004	39	Correspondence from defendant, Melvin Eugene Gibbs dated January 29,2004 to Judge David A. Faber *(elm 2/10104* zf) (zf, Deputy Clerk) (Entered: 02/1 *0/2004)*
02/11/ 2004	40	NOTICE OF APPEAL (Interlocutory) by Melvin Eugene Gibbs re [29] Order. FILED ON *2/6/04;* No Filing Fee (mlb, Deputy Clerk) Modified on 2/11/2004 (mlb, Deputy Clerk). (Entered: 02/11/2004)
02/11/ 2004		Transmission of Notice of Appeal and Docket Sheet as to Melvin Eugene Gibbs to US Court of Appeals re [40] Notice of Appeal - Interlocutory (mlb, Deputy Clerk) (Entered: 02/11/2004)
02/11/ 2004	41	AMENDED NOTICE OF APPEAL by Melvin Eugene Gibbs re [30] Order, No Filing Fee Paid (mlb, Deputy Clerk) (Entered: *02/11/2004)*
02/11/ 2004		Transmission of Notice of Appeal and Docket Sheet as to Melvin Eugene Gibbs to US Court of Appeals re [4\] Notice of Appeal - Final Judgment (mlb, Deputy Clerk) (Entered: 021ll/2004)
02/11/ 2004	42	ORDER as to Melvin Eugene Gibbs Assigning this case to Chief Judge Faber. Signed by Judge Benson E Legg on *2/5104.* (cags,

		Deputy Clerk) (Entered: *02/13/2004)*
02/13/ 2004	43	MOTION to Withdraw as Attorney by Paula Xinis of the Public Defender's Office as to Melvin Eugene Gibbs. Responses due by *3/1/2004 (c/s)(zf,* Deputy Clerk) (Entered: *02/13/2004)*
02/13/ 2004	44	-ORDER granting [43] Motion to Withdraw as Attorney. Paula Xinis withdrawn from case as to Melvin Eugene Gibbs (l)and it is further ORDERED that an attorney from the Criminal Justice Act Panel be substituted as counsel. Signed by Judge David A. Faber on 2/13/04 (c/m 2/13/04 zf) (zf, Deputy Clerk) (Entered: 02/13/2004)
02/18/ 2004	46	TRANSCRIPT (2) of Proceedings as to Melvin Eugene Gibbs held on September 17, 2003 and September 23,2003 before Judge Richard D. Bennett. Court Reporter: Lisa K. Bankins (FILED SEP ARA TEL Y) (zf, Deputy Clerk) (Entered: 02/27/2004)
02/23/ 2004	45	REPLY by Melvin Eugene Gibbs to Government's RESPONSE re: (Miscellaneous Pro-Se Pleadings) (c/s)(zf, Deputy Clerk) (Entered: 02/25/2004)
02/25/		USCA Case Number as to Melvin Eugene

2004		Gibbs 04-6217 for [40] Notice of Appeal - Interlocutory filed by Melvin Eugene Gibbs, [41] Notice of Appeal - Final Judgment filed by Melvin Eugene Gibbs. (Case Mgr. S. J. Beasley)(mlb, Deputy Clerk) (Entered: 02/25/2004)
03/01 2004	47	CJA 20 as to Melvin Eugene Gibbs: Appointment of Attorney Anthony D Martin for Melvin Eugene Gibbs. Signed by Clerk on 2/13/04 (c/m 2/24/04 dps) (zf, Deputy Clerk) (Entered: 03/01/2004)
03/18/ 2004	48	MOTION For Extension of Time For Evaluation by Warden, Marvin D. Morrison as to Melvin Eugene Gibbs (zf, Deputy Clerk) (Entered: 03/19/2004)
03/18/ 2004	49	ORDER granting [48] Motion For Extension of Time For Evaluation as to Melvin Eugene Gibbs (1) Signed by Judge David A. Faber on 3/18/04 (c/m 3/19/04 zf) (zf, Deputy Clerk) (Entered: 03/19/2004)
03/25/ 2004	50	Pre-Hearing Brieffiled by Melvin E. Gibbs with attachments (zf. Deputy Clerk) (Entered: 03/26/2004)
04/09/ 2004	51	Order Sealing Mental Health Evaluation 'Report as to Melvin Eugene Gibbs. Signed by Judge David A. Faber on 4/8/04 (e/m 4/12/04) (zf, Deputy Clerk) {Entered: 04/12/2004)

04/09/2004	52	Sealed Document (zf, Deputy Clerk) (Entered: 04/12/2004)
04/20/2004	53	Request to cancel competency hearing and ORDER Approving the same as to Melvin Eugene Gibbs. Signed by Judge David A. Faber on 4/20/04 le/m & faxed 4/22/04 zf) (zf, Deputy Clerk) (Entered: 04/22/2004)
05/11/2004	54	Correspondence to the Honorable David A. Faber from defendant, Melvin Eugene Gibbs re: psychological report *(cis)* (zf, Deputy Clerk) (Entered: *05/13/2004)*
05/17/2004	55	MOTION For Temporary Transfer From SuperMax to the Prince George's County Detention Center *by* Melvin Eugene Gibbs and memorandum. Responses due by *6/312004* (c/s)(zf, Deputy Clerk) (Entered: *05/1 7/2004)*
05/17/2004	56	Correspondence to the Honorable David A. Faber from defendant, Melvin E. Gibbs re: defendant's letter dateg. 5/11L04 *(c/s)(zf,* Deputy Clerk) (Entered: *05/19/2004)*
05/24/2004	57	ORDER granting [55] MOTION For Temporary Transfer From SuperMax to the Prince George's County Detention Center by Melvin Eugene Gibbs (1) Signed by Judge David A. Faber on *5/21/04 (elm 5/24/04* zf) (zf, Deputy Clerk) (Entered:

		OS/24/2004)
06/01/ 2004	58	MOTION For Expedited Bail Hearing by Melvin Eugene Gibbs. Responses due by *6/18/2004 (elm 6/3104* zf)(zf, Deputy Clerk) (Entered: *06/03/2004)*
0/03/ 2004	59	Correspondence to Judge David A. Faber from defendant, Melvin Eugene Gibbs *(elm 6/9/04* zf) (zf, Deputy Clerk) (Entered: *06/09/2004)*
06/23/ 2004	60	MOTION for Issuance of Show Cause Order by Melvin Eugene Gibbs, attachments and request for hearing. Responses due by *7/12/2004 (c/s)(zf,* Deputy Clerk) (Entered: *06/24/2004)*
07/07/ 2004	61	ORDER "Scheduling" a Competency Hearing for August 9, 2004 in Baltimore as to Melvin Eugene Gibbs. Signed by Judge David A. Faber July 7, 2004 *(elm 7/8/041ad)* (lad3, Deputy Clerk) (Entered: *07/08/2004)*
07/14/ 2004	62	MOTION For Review of Pre- Trial Detention and Release to Third Party Custody by Melvin Eugene Gibbs and attachments. Responses due by *8/212004* (c/s)(zf, Deputy Clerk) (Entered: 07/15/2004)
05/17/ 2004	63	MOTION for Discovery and Production of Documents by Melvin Eugene Gibbs and request for hearing. Responses due by *8/212004*

		(c/s)(zf, Deputy Clerk) (Entered: *07/1912004)*
07/30/ 2004	64	MOTION for Immediate Release from Pre-Trial Detention by Melvin Eugene Gibbs. Responses due by *8/1612004 (c/s)(zf,* Deputy Clerk) (Entered: *08/02/2004)*
08/09/ 2004		Motion Hearing as to Melvin Eugene Gibbs re [641 MOTION for Release from Custody filed by Melvin Eugene Gibbs held sub curia before Judge David A. Faber (District of West Virginia). (Court Reporter: Lisa Bankins.) (mdw, Deputy Clerk) (Entered: 08/09/2004)
08/18/ 2004		Second NOTICE OF APPEAL filed, on 8/18/04 by Anthony D. Martin, Esq. re Melvin Eugene GibbS (mlb, Deputy Clerk) (Entered: 08/24/2004)
08/20/ 2004	65	NOTICE OF APPEAL by Melvin Eugene Gibbs re oral ORDER from 8/9/04 "DENYING" defendant bail; filing fee paid (mlb, Deputy Clerk) (Entered: 08/24/2004)
08/20/ 2004	66	MOTION to Dismiss and Recusal by Melvin Eugene Gibbs. Responses due by 9/7/2004 (c/s)(zf, Deputy Clerk) (Entered: 08/24/2004)
08/20/ 2004	67	Emergency MOTION For Bail Review by Melvin Eugene Gibbs. Responses due by 9/7/2004 (c/s)(zf, Deputy Clerk) (Entered:

		08/24/2004)
08/24/ 2004		Transmission of Notice of Appeal and Docket Sheet as to Melvin Eugene Gibbs to US Court of Appeals re [65] Notice of Appeal - Interlocutory (mlb, Deputy Clerk) (Entered: 08/24/2004)
08/24/ 2004		Transmission of Notice of Appeal and Docket Sheet as to Melvin Eugene Gibbs to US Court of Appeals re Second Notice of Appeal (mlb, Deputy Clerk) (Entered: 08/24/2004)
08/30/ 2004	68	ORDER ofUSCA (certified copy) "APPOINTING" Anthony D. Martin of Greenbelt, MD as counsel for appellant; Melvin Eugene Gibbs re [65] Notice of Appeal- Interlocutory (mlb, Deputy Clerk) (Entered: 08/31/2004)
08/31/ 2004		USCA Case Number as to Melvin Eugene Gibbs 04-4628 for [65] Notice of Appeal - Interlocutory filed by Melvin Eugene Gibbs. (Case Mgr. Deborah Davenport)(mlb, Deputy Clerk) (Entered: 08/31/2004)
09/01/ 2004	69	R`equested Jury Instructions by USA as to Melvin Eugene Gibbs (c/s) (zf, Deputy Clerk) (Entered: 09/02/2004)
09/03/ 2004	70	MOTION for Reconsideration by Melvin Eugene Gibbs. Responses due by 9/20/2004 (c/s)(zf, Deputy Clerk) (Entered: 09/03/2004)
09/07/ 2004		Re-Arraignment held before Judge David A. Faber as to Melvin

		Eugene Gibbs (1) Count 1-2,3-5 held on 9/7/2004 (Court Reporter Tracy Dunlap) (has, Deputy Clerk) (Entered: 09/07/2004)
09/07/2004		Plea entered by Melvin Eugene Gibbs (1) "GUILTY"as to Count 1; and, "NOT GUILTY" as to counts 2, 3, 4, and 5 held before Judge David A. Faber (Court Reporter Tracy Dunlap) (has, Deputy Clerk) (Entered: 09/07/2004)
09/07/2004		Sentencing held before Judge DavidA. Faber as to Melvin Eugene Gibbs (Court Reporter Tracy Dunlap) (has, Deputy Clerk) (Entered: 09/07/2004)
	71	Waiver of Preparation of Presentence Investigation and Reporfby Melvin E. Gibbs (zf, Deputy Clerk) (Entered: 0970~/2004)
09/07/2004	72	EXHIBIT LIST by USA as to Melvin Eugene Gibbs (zf, Deputy Clerk) (Entered: 09/08/2004)
09/07/2004	73	JUDGMENT as to Melvin Eugene Gibbs (1) as to Count 1: 12 Months and 17 Days Imprisonment; 3 Years Supervised Release with Conditions and $100.00 Special Assessment; Counts 2, 3, 4 and 5 are Dismissed. Signed by Judge David A. Faber on 9/7/04 (c/m 9/7/04

		has) (zf, Deputy Clerk) (Entered: 09/08/2004)
09/07/2004	74	MOTION for Sanctions by Melvin Eugene Gibbs. Responses due by 10/1/2004 (c/s)(zf, Deputy Clerk) (Entered: 09/14/2004)
09/14/2004	75	NOTICE OF APPEAL, re: Final Judgment 9/7/04, by Melvin Eugene Gibbs (krc, Deputy Clerk) (Entered: 09/15/2004)
09/15/2004		Transmission of Notice of Appeal and Docket Sheet as to Melvin Eugene Gibbs to US Court of Appeals re [75] Notice of Appeal - Final Judgment (krc, Deputy Clerk) (Entered: 09/15/2004)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

UNITED STATES OF AMERICA : CRIMINAL NO.

v.

MELVIN EUGENE GIBBS

(Mailing Threatening Communication,
18 U.S.C § 876;

Interstate Threatenilng Communication,
18 U.S.C. § 875)

INDICTMENT

The Grand Jury for the District of Maryland charges that:

On or about November 18,2002, in the District of Maryland, the defendant,

MELVIN EUGENE GIBBS

did knowingly cause to be delivered by the Postal Service, according to the direction thereon, a communication with or without a name or designating mark subscribed thereto, addressed to another person, to wit: Secretary of the Department of Labor Elaine Chao, who is an employee of an agency of a branch of the United States government as set forth in 18 U.S.C. § 1114, which contained a threat to injure the person of another.

18 U.S.C. § 876

COUNT TWO

The Grand Jury for the District of Maryland further charges that:

On a date between on or about May 2,2003 and on or about May 6, 2003, in the District of Maryland, the defendant,

MELVIN EUGENE GIBBS

did knowingly cause to be delivered by the Postal Service, according to the direction thereon, a communication with or without a name or designating mark subscribed thereto, addressed to another person, to wit: an intended recipient at the Employees' Compensation Appeals Board, which contained a threat to injure the person of another.

18 U.S.C. § 876

COUNT THREE

The Grand Jury for the District of Maryland further charges that:

On or about August 5, 2003, in the District of Maryland, the defendant,

MELVIN EUGENE GIBBS

did transmit in interstate commerce a communication containing a threat to injure the person of another, to wit: a facsimile addressed to Robert Barnes.

18 U.S.C. § 875(c)

COUNT FOUR

The Grand Jury for the District of Maryland further charges that: On or about August 6, 2003, in the District of Maryland, the defendant,

MEL VIN EUGENE GIBBS

did transmit in interstate commerce a communication containing a threat to injure the person of another, to wit: a facsimile addressed to Robert Barnes.

18 U.S.C. § 875(c)

COUNT FIVE

The Grand Jury for the District of Maryland further charges that:

On or about August 22, 2003, in the District of Maryland, the defend,illt,

MELVIN EUGENE GIBBS

did transmit in interstate commerce a communication containing a threat to inj ure the person of another, to wit: a facsimile addressed to Robert Barnes.

18 D.S.C. § 875(c)

THOMAS M. DIBIAGIO
UNITED STATES ATTORNEY

A TRUE BILL:

FOREPERSON

DATE

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

UNITED STATES OF AMERICA Plaintiff, v. MELVIN EUGENE GIBBS, Defendant.	:CRIMINAL ACTION : NO. 8:03-CR-00400-PJM : DATE: January 23, 2004

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE DAVID A. FABER
UNITED STATES DISTRICT JUDGE
IN BALTIMORE, WEST VIRGINIA

APPEARANCES:

For the Government: JAMES M. TRUSTY
Assistant U.S. Attorney
6500 Cherrywood Lane, Suite 400
Greenbelt, Maryland 20770-1249

For the Defendant: MELVIN EUGENE GIBBS,
DEFENDANT Appearing Pro Se

standby Counsel
For the Defendant: PAULA XINIS
Assistant Federal Public Defender
6411 Ivy Lane, Suite 710
Greenbelt, Maryland 20770

Court Reporter: Teresa L. Harvey, RDR, CRR

proceedings recorded by mechanical stenography;
transcript produced by computer.

Proceedings had before The Honorable David A. Faber, chief Judge, united States District Court, sitting by special assignment in Baltimore, Maryland, on Friday, January 23, 2004, at 1:30 p. m., as follows:

MR. TRUSTY: Your Honor, this is criminal number PJM-03-0400. I'm Jim Trusty on behalf of the united States. At my side is case agent for this matter Ed Ryan from the FBI; and Mr. Gibbs and standby counsel are present as well.

THE COURT: All right. Mr. Gibbs is representing himself in this matter, with Ms. Xinis as standby counsel, pursuant to a previous order by the court.

This is a pretrial motions hearing. There are a number of motions and the court has received some recent filings by Mr. Gibbs which, coupled with other matters of record in this case, cause me to bring up before we proceed to considering any of the motions the question of whether the court should enter an order pursuant to Title 18, United States code § 4241 to have Mr. Gibbs subjected to a mental competency examination.

I raise this because of a number of matters. Judge Bennett, who previously had this case, in a letter to counsel in September – on September 24 of last year, suggested that defendant be – that defense counsel consider making a motion under 18 U.S.C. § 4241(a) to have Mr. Gibbs examined based on concerns that he had at that time, including a reference In an order he entered on September 25, 2003, the next day after the letter to counsel. In his order he referred to past involuntary commitment for psychiatric

treatment of the defendant. Apparently Judge Bennett was concerned but didn't think his concerns rose to the level where he could use the power conferred upon judges to order such an examination on their own motion under § 4241.

But since that time there are a number of additional filings that, coupled with Judge Bennett's concern, cause me to think perhaps I should take that step. Among those matters are allegations in a letter written by the defendant to Judge Messitte on December 22 of last year which contained some very unusual allegations, such as the fact that the Smithsonian Institute was involved in a pattern of racketeering in connection with the theft of three thousand works of art valued at $2 billion; an allegation that Bill Cosby's curator had stolen artworks from Fisk university; that there is a hundred million dollars of art missing from various black colleges, and that the FBI was asked to investigate and suppressed or killed the investigation; that $3 billion worth of artwork were stolen from the Barnes Trust at Lincoln university; and additional similar allegations.

There is also in the opposite to the voir dire questions of the Government filed by Mr. Gibbs on the 14th of January, he asked for subpoenas to -- he included a long witness list In his opposition to the voir dire questions asking the court to subpoena many high profile persons who, it's obvious to the court, have no connection with this case. And then just today there were some additional filings, including passing to the court a copy of an amended complaint that Mr. Gibbs filed In a civil case in New York, that just gi ve the cou rt a lot of consideration about

whether this case should proceed without the court confirming that Mr. Gibbs is not only competent to assist in his own defense, but since he is representing himself, whether he is competent to make an intelligent waiver 0f his right to counsel. The court so found at a previous hearing, but that was before I was privy to the new matters that I've just summarized.

MR. GIBBS: May I address the court, Your Honor?

THE COURT: Yes, you may.

MR. GIBBS: The matters that the court spoke of, approximately 85 percent of the allegations that the court addressed are not matters that I raised. The files that were confiscated from me contained two books, one **William H. Johnson: Truth Be Told** by Turner and Dailey, is an art dealer. Mr. Turner, who in his investigation uncovered this information. This is not information coming from Mel Gibbs. I was the attorney of record representing the Estate of William H. Johnson. The information that I gathered was gathered from the National Archives and also the Library of congress. These are documents that the Government maintained that support each and every allegation in those documents. Dr. David Driskell was curator at Fisk university when the Smithsonian Institution sent approximately twenty William H. Johnson paintings to Fisk university. when Dr. Driskell left Fisk university, he took over a hundred of those paintings with him, illegally taken from Fisk university. Today he has a net worth of between a hundred and three hundred million dollars. He is the curator of Bill Cosby's art collection. Two paintings that the Smithsonian sent to Dr.

Driskell -- well, actually sent to Fisk university was "Children playing London Bridge" and "I Baptize Thee."

Those documents were provided to me by the Inspector General at the Smithsonian Institution. The Inspector General also provided to me documents that show that the Smithsonian has filed suit in the charleston Division of the federal court system over a painting that they had given to the Slavemart Museum and did not notify the court that not only did they not have ownership of the painting, but they had no right to come into court and sue over that William H. Johnson painting.

So every statement made there is documented independently of any statement that I have made. If the court takes the time to read, there are two books. One is called **Homecoming: The Art and Life of William H. Johnson**. It was published by the Smithsonian, along with a gentleman by the name of Dr. Richard Powell, in which they make certain allegations of proper title to the William H. Johnson artwork.

This is a case that I am prepared to argue all the facts before the court, but at the same time, I do not want the court to have the opinion that these documents or allegations are coming from me. In my research -- and I was also -- I'm a retired New York City police officer. In my research, my skills as an investigator, the documentation in these books, and this gentleman, Steve Turner, the allegation that they made against him was that he is a white art collector, and they made an allegation that they were coming after him because they were black and he was trying to stop them, but Mr. Turner --

THE COURT: Let me interrupt you a minute. Did you school after you retired as a New York City Police officer?

MR. GIBBS: That is correct, Your Honor.

THE COURT: All right.

MR. GIBBS: Excuse me one second, Your Honor.

THE COURT: well I Mr. Gibbs, I don't understand what all this has got to do with this case and, you know, you need to address, if you can, the concerns that I just expressed.

MR. GIBBS: certainly, Your Honor. During the time I was litigating on behalf of the William H. Johnson heirs, I sued, along with the other defendants, the Justice Department and also the FBI as defendants in the suit in Federal District court for the District of Columbia. Last year I filed a subsequent suit that I had transported to Your Honor. That suit was filed in Putnam County in the New York Supreme Court system. There is a motion pending in that suit to bring in the FBI and the Justice Department as defendants in that suit.

What I am alleging is that what has occurred as a result of that is the reason why I was subsequently arrested in this suit; that I have gone all of my life with no conflicts in the justice -- or with the justice system of which I have been incarcerated or anything else.

In actuality, the matter of involuntary committal that this court refers to did not take place in the manner in which is specified in the record. what happened in that particular case that I have had counseling previously, so what I did, I voluntarily went in; signed myself in. Then a doctor involuntarily committed me. Then I discovered that the doctor that signed the committal order had a financial interest in the institution, and I sued for my release, and it was a court in Montgomery County. And since Mr. Trusty has all the other documents from that court. he should also have the document on which the court forced my release, which means was not involuntarily committed; that historically, I have had mental issues, and I have addressed those issues, and I addressed those issues very well. So any issue that the court would allow or like for me to address, I will address.

My wife also testified at my detainment hearing that during that period of my life -- I have a lung disease called Sarcoidosis. In order to save my life, I was put on steroids. Was taken off the steroids too fast, and that's what caused the mental condition that I suffered at that time. when I completely came off of the steroids, I have maintained my life for sixteen years with no type of incident whatsoever.

In all the years that I have existed on this earth, that was the only incident that anyone could point to, and that incident was caused by steroids. Now that I'm not on steroids, and I haven't been for a number of years, the disease that I have is in remission. unfortunately, the steroids did damage my immune system, and presently I have somewhat of a cold, that as I'm being detained

now I don't have medical access. I've been trying to get to a medical unit for two weeks. I can actually die because my immune system was damaged from the steroids .

But I have always maintained a relationship -- whether was a police officer, practicing law, whatever I have done in my lifetime, I have done it well, I have done it professionally, and I have done it in a manner that has always been respectful. There are judges that I have disagreed with. Have argued this present case between the southern District of New York. I've been before the U.S. second Circuit Court of Appeals twice, the D.C. Circuit Court of Appeals twice. I am still a member, licensed to practice before the U.S. second circuit Court of Appeals. I have not appeared before that court because I respect the fact that I'm admitted to practice, but in my present medical condition, out of respect, I do not make any appearances. I only deal with that which I am capable of dealing with .

This whole incident came about because I was trying to get to things necessary to maintain my life, as I have been doing for the past sixteen years. I have gone sixteen years maintaining myself, a relationship with my wife, that I will match against anyone, not only in this court but in the state of Maryland. And I don't idly come before this court and make this statement. I make it because, as I've said, all of my life I have done the things that the system has asked. I have gone far above the things the system has asked. Excuse me one second, Your Honor.

THE COURT: Well, I need to hear from the other side, Mr. Gibbs. Mr. Trusty?

MR. TRUSTY: Your Honor, I'll be glad to raise some of the concerns the Government has had actually for some tie. I think at its heart the situation before the court at this moment is not an unpredictable one, but it has been a difficult issue to grapple with in terms of counsel involved in this case and previous both magistrate and district judges that have had contact with this case who have had exposure to some of the writings, as the court now really has a greater taste of at this juncture. So we have looked at 4241 prior to the most recent filings actually, and from the Government's side given it some thought, or at least contemplated the possible application by the court, either at this juncture or at a trial -- at the period of a trial. I would also say that I think what is probably clear is that Mr. Gibbs -- and I say all of this -- I should caveat this, I really do say all these things with no desire to embarrass Mr. Gibbs. I know the court's inquiry is similarly founded in good intentions, as opposed to some effort to embarrass or belittle Mr. Gibbs. But think we are necessarily talking about his state of mind now, which raises some troubling issues and has led the Government to some fairly difficult conclusions about his ability to conduct himself at trial.

I think Mr. Gibbs is an intelligent man. I don't think anyone loses track of the fact that he has been employed at least for stretches of his adult life. He certainly has some familiarity with the law, which is perhaps a blessing and a curse, but the reality of

it is it at least gives him a leg up in the abstract on some pro se defendants who have never had any form of legal training or legal experience. That said, I think the part that the Government has the most difficulty with is, under 4241(a), when you talk about the standard here, we're willing to kind of perhaps suspend this belief or give the benefit of the doubt when it comes to whether or not the defendant understands the nature and consequences of the proceedings against him. I think most graphically the difficulty that the Government is having in assessing the potential need here for an evaluation is whether or not Mr. Gibbs can assist properly in his defense. And I think what we are gathering from the pleadings, and even from the decision to discharge counsel, is that Mr. Gibbs views this trial, and even this motions hearing that was scheduled today, as an opportunity to wax eloquently about the entire conspiracy that he writes about; that it is an opportunity to vindicate himself when it comes to the charges of a wide-ranging, long-term conspiracy to steal billions of dollars of African-American art. NOW, the reality is whether that conspiracy is true or isn't true, it is legally - if not entirely, at least largely - irrelevant to the proceedings that are here.

And I think that is where the Government has kind of gravitated over some time and over repeated exposures to kind of the thought process and the arguments of Mr. Gibbs as displayed by his letters and displayed by his more recent motions or filings, that the great concern we have, and what I expressed to my agents *even*, was I'm not sure if it will happen today, or if it will happen when we get to the point of a trial, but we may get to a point, and

maybe the court is at that point, where the court is at least satisfied to the degree necessary to require the evaluation that he will not properly assist in his defense; that he has some legal skills, has the liability to articulate himself, but will not in any way realize what are defenses in this case and how everything that he intends to litigate, based on his pleadings, is essentially irrelevant to whether or not threatening communications were mailed or faxed.

And so, Your Honor, I have no interest in changing trial dates or motion dates, which obviously is the practical effect 0f any evaluation, but I guess what I would just point out is we certainly share the court's concerns and it may be better at this juncture to act now rather than to get into a trial and realize that these, I think well-founded, predictions are bearing out that he is not properly assisting in his defense, even if he understands the nature and consequences of the proceedings.

THE COURT: All right. Mr. Gibbs, you can respond to what he said, briefly, please.

MR. GIBBS: Yes, Your Honor

THE COURT: I mean, I understand your –

MR. GIBBS: Clearly, Your Honor, I'm not here to litigate any conspiracy. This is background information. The problem in my defense is not in my mental capacity. I've been held at the prince George's county Detention Center for four months with only limited access to materials. I appeared before this court on December 15. Upon leaving here on December 15, I was put in Super Max, the most maximum security prison in the

state of Maryland. Between leaving Your Honor on December 15, I could not communicate with my wife until December 24, Christmas Eve. I'm literally locked down 24 hours a day with no access to the legal materials that I need, with no access to the environment I need to provide an adequate defense. The problems that I've had historically mentally has nothing to do with things going on in this case. I can provide whatever I need to represent myself, to assist counsel, to understand the nature of anything going on. As I've outlined, even in my indictment, it's defective because at 1 east three elements -- the U.S. Fourth Circuit Court of Appeals in *United States v. Daubert -- (Darby)*

THE COURT: Those are issues that you've put before the court that I'm not ready to reach yet.

MR. GIBBS: I understand that, Your Honor.

THE COURT: I'm concerned about one issue right now and that's whether I have an obligation, and I'm coming to the conclusion that I do, to refer you under -- continue this case and refer you to have you examined under 4241. And I think I need to do that to protect you, as well as for many other reasons.

MR. GIBBS: I respect what Your Honor is saying. What I'm asking is whether it's determined whether or not I'm liable to represent myself, if I fully understand the issues --

THE COURT: well, this is --

MR. GIBBS: -- and I presented to the court the issues as they appeared, and I've presented to the court documented proof that the questions that the court raised didn't come from me, those

are documented in books that are published. They come from the records of the Smithsonian, the records of the National Archives, the Library of congress. If all of those issues are substantiated independently of Mel Gibbs, then for Mel Gibbs there is nothing else, as an attorney or as a layperson, that is nothing that I see as a person that have given the court any concern over, or anyone else any concern over. I have conducted myself admirably under the worst conditions that humans face, for five months, with no problem. Dr. Moldauer, who examined me extensively, testified in his affidavit I would possess no risk to society, that I was conducting myself like any other human being.

With all of this independent evidence that I have given the court or no one else any reason that can be laid out in an opinion or document to say Mel Gibbs has performed in any manner other than that which was expected of him.

THE COURT: All right. well, you've always been -- so far, you've been very polite and respectful toward me, and I appreciate that, Mr. Gibbs, but I believe that the things that mentioned at the beginning of this hearing, coupled with at least two references you've made today to a history of mental issues, as you called it, I believe that the court needs to take this action. And, accordingly, I find based on all these things that there is reasonable cause to believe that this defendant may presently be suffering from a mental disease or defect that renders him mentally incompetent to the extent that he is unable to understand the nature and consequences of the proceedings against him or to

assist properly in his defense. And I agree with Mr. Trusty that the principal question here is whether he is capable of assisting properly in his defense, particularly in view of the fact that he has insisted on representing himself in this case. And I'm going to enter an order requiring Mr. Gibbs to be referred for a psychiatric or psychological examination and report, and we'll follow the procedures in 4241, including scheduling at a later date a hearing which will be conducted under the provisions of 4247(d) of Title 18 and --

MR. GIBBS: Excuse me, Your Honor. One other matter, Your Honor. I had asked that it be placed on the record as to why my case was transferred from Judge Messitte to Your Honor, and I would also like for that matter to be specified on the record, because from a point of preserving my issues for review, my case was assigned to Judge Messitte of the Southern Division, and I 'didn't have a hearing or nor was I given any explanation as to why the case was transferred from Judge Messitte and assigned to Your Honor.

THE COURT: Is there a record? There should be a record of that. Mr. Trusty?

MR. TRUSTY: Your Honor, I have never received any sort of order of the court. I was informed -- I should make it clear for the record today that the Government had no voice or opinion as to the issue of recusal or of the change in venue from Greenbelt to Baltimore.

I would add that neither a specific judge nor a courthouse within the same district are a matter of statutory or constitutional right to the defendant, so I don't think that whatever preservation is made or not made as to this issue is not going to generate a salient issue at some other level. But certainly don't have any objection to perhaps Your Honor inquiring of Judge Motz if he is willing to issue a summary opinion on this.

My understanding is because Judge Motz had received some of the correspondence, or was the subject of some of the correspondence of Mr. Gibbs, that this court -- I say that in the broad sense of the District of Maryland, felt it appropriate to not have any judge that is associated with the District of Maryland preside over a case where there is a potential witness or appearance of conflict of interest that could arise based on Judge Motz's being the target of that correspondence. That certainly is an appropriate determination, I would suggest.

As much as the Government is happy to try the case in Greenbelt in front of Judge Messitte, I think similar to Mr. Gibbs, we don't have any sort of right to dictate what the court administratively decides. So if Your Honor --

THE COURT: well, I need to make sure the record is clear on this so that you'll have a record In case you --

MR. GIBBS: But that was not my statement, Your Honor. Chief Judge Legg was the judge in the civil case. This case was assigned to Judge Messitte in the Southern Division, a criminal case. My argument wasn't about necessarily the division. Had I been arrested, as I was, and I was --

THE COURT: I understand.

MR. GIBBS: -- charged in the Southern Division, I did not have a right as to which division the case was brought. But because the case was brought in the Southern Division, my argument was in that it was brought in the Southern Division, that it should not be simply transferred for convenience. And the fact that Judge Messitte was the assigned judge, that once the case was transferred to Your Honor from West Virginia, that was never given a hearing saying we are relieving Judge Messitte, or Judge Messitte is recusing himself and we are going to assign this case to a judge without the District of Maryland. As a defendant, my argument is that I have a right, on the record, to have a hearing and someone specify why Judge Messitte is being recused and this case is assigned to a judge from without the District of Maryland.

THE COURT: well, it was assigned to me because all of the judges in the District of Maryland have recused themselves; and that l s a decision that the judges make that you don't really have standing to question, Mr. Gibbs, as I understand the Rules. But the record should be clear as to why that was done, and I will ensure that it is, so if you do have any rights with regard to appeal of that decision that down the road you'll be able to assert them.

MR. GIBBS: Thank you.

THE COURT: In light of what the court's ruling is today on its own motion, it seems to me inappropriate to consider any of the other pending matters at this time. Do you agree with that, Mr. Trusty?

MR. TRUSTY: I do, Your Honor. I think legally it would be a nullity to go forward at this point.

MR. GIBBS: Your Honor, for the record, I would object because, again, I'm arguing that the indictment is defective, and the indictment is defective in that each count is missing at least three elements, and 876 is then charged is charged incorrectly. Before Your Honor on the 15th there was a question asked what sentence I faced and whether or not I understood that. Your Honor came to the conclusion that because a federal official was involved, it would be ten years, but yet if Your Honor looks at the indictment, it simply charged 876. Eight seventy-six is divided into (a), (b), (c) and (d), so Count One and Two is defective on its face. At east three elements are missing in that there is no person listed in the indictment, as has to be specified. A reasonable recipient, that is an element; it's missing. Someone familiar with the context of the letter, that's the second element; it's missing. There is no actual threat. The First Amendment -- there is a rebuttable presumption that all speech is protected. If I had crossed the line, then in reading each count, one would have to specify what speech did I utter that the First Amendment does not protect?

My wife has asked me on many occasions what am I being charged with. I would ask the court to look at all five counts. Inform me, or my wife, what speech did I utter? What speech constituted a threat, in that the indictment is defective? The

indictment is what gives this court authority. If the indictment is defective, it must be dismissed. This court has no authority thereafter. That is the issue that I would like to preserve for any appeal, and that is the issue I would like for the court to decide today, because in ordering me in a situation that you're placing me in, constitutionally I am being denied my Fifth Amendment right to freedom. And I understand that the court can do that, Your Honor, and I accept that. But it is the most harsh remedy that this court can extract on me and my family, given the fact that all the years of my life I've followed every issue that has been expected in society. So I would say to the court that the indictment is defective and my continued detention in any circumstance is unfair to me and it is unfair to my family.

THE COURT: well, I understand your argument and your position, Mr. Gibbs, but we're going to do first things first, and the first thing to do is to take care of putting to rest one way or the other any questions about your mental competency, and that's what the court is going to do. I have an obligation to do that, and I'm permitted to do that under the law on my own motion, and I have done so, and an appropriate order will be promptly entered. The case will be continued pending the results of the examination and the court's. ruling thereon.

MS. Xinis, do you have anything you want to bring up today?

MS. XINIS: If I could have a moment?

(The defendant and Ms. Xinis confer off the record.)

MS. XINIS: Your Honor, I've spoken with Mr. Gibbs. one thing he does want me to raise before the court, which I have been privy to, is that it is very difficult at Super Max for Mr. Gibbs. It's difficult for every detainee at super Max, but most specifically Mr. Gibbs, because of his health issues and because he has endeavored to represent himself. We have had much difficulty with correspondence being delayed, never arriving. We were told by the marshals this morning that Mr. Gibbs would not even be able to bring a code book with him, that I have provided for him, which has a version of the new rules in, with him. obviously, regardless of what the competency hearing would disclose, it is vital to Mr. Gibbs' interests that he continue to prepare for his case, so I raised with the marshals that I would raise it with the court that Mr. Gibbs, in light of the court's ruling, would likely be moved from Super Max to another facility, such as Butner. I've explained that to Mr. Gibbs, but if there is anything that the court can do to expedite that process and in the interim to make available, maybe by special order, medical attention for Mr. Gibbs, as well as access to books and to the paperwork that he needs to continue in his own defense.

MR. GIBBS: Also, Your Honor, I have a special request. If the court would allow me just a couple minutes, I need to transfer some documents to my wife that I need preserved so that I'll have access when I speak to her to reference those documents so that I can properly start preparing an appeal to the Fourth circuit, so I would like to give her some documents that I have.

THE COURT: well, whether you can do that depends on -- you're in custody, Mr. Gibbs, and the marshals have rules and regulations that cover things like that, and I'm not going to interfere in that. If those practices and procedures permit you to make that transfer, it's okay with me; but if they don't, I'm not going to order it, so that's a matter that I'm not going to deal with.

I'm filing -- I'm handing to the clerk for filing under seal a document that was given to me earlier on the defendant's behalf by Ms. Xinis, and I'll ask that that be filed under 13 II seal.

Do you want this amended complaint in the New York case made a part of the record here, Mr. Gibbs?

MR. GIBBS: Yes, I do, Your Honor.

THE COURT: All right. I'll hand that as an exhibit to this hearing. That's a copy of the amended complaint filed in the civil suit in Putnam county, New York.

Is there anything else to come before the court today? Now, Mr. Gibbs, I've given you a pretty full hearing here, and if you have something new I'll listen to it, but I don't want you to rehash the things you've already told me.

MR. GIBBS: I'm not going to rehash anything, Your Honor. The only thing I wanted to bring to the court's attention is because that is a pending case in New York and I don't know what my confinement is going to be that, to the extent possible, I want on the record that I am making a request to the court that in some way someone be appointed, and not that I so much expect

the court to do so, but I'd like for it on the record that I'm asking that because that is an ongoing suit, and because it does impact this, that I am putting on the record that I'm asking the court to appoint an attorney to see forward that litigation that now I'm being put in a position where I cannot respond and adequately defend that particular lawsuit.

THE COURT: well, I think that's a request that needs to be addressed to the court where that suit is pending, Mr. Gibbs. I don't think it would be any of my business to enter such an order, but I think if you have a legitimate request in that regard you ought to ask the court in New York about it, not me.

MR. GIBBS: well, I've already addressed that court, but also because of the issues here, I just want it on the record, Your Honor.

THE COURT: All right. well, anything else, Mr. Trusty?

MR. TRUSTY: Not from the Government. Thank you, Judge.

THE COURT: All right. This hearing is concluded and the court will enter an order implementing its ruling today promptly, after which you'll be transferred for an examination, Mr. Gibbs. And in the meantime, you're remanded to custody.

(proceeding concluded at 2:11 *p.m., January* 23, *2004.)*

CERTIFICA TION:

I, Teresa L. Harvey, official Court Reporter, certify that the foregoing is a correct transcript from the record of proceedings in the matter of united States of America, plaintiff v. Melvin Eugene Gibbs, Defendant, criminal Action No. 8:03-cr-00400-PJM, as reported on January 23, 2004.

Teresa L. Harvey
Teresa L. Harvey, RDR, CRR

February 2, 2004
Date

LANNING MOLDAUER, PH.D.
Consulting Clinical Psychologist

5619 33rd Street, N. W.
Washington, D.C. 20015

2000 P Street, N.W. #610
Washington, D.C. 20036

DC Psychology Lie. #1348
MD Psychology Lie. #1700

TEL 202-244-5293
FAX 202-318-2328

August 26, 2003

Paula Xinis, Esq.
Federal Public Defender
6411 Ivy Lane, Seventh Flr.
Greenbelt, MD 20770

Dear Ms. Xinis:

I have just returned from a three-and-a-quarter hour interview with your client, Mr. Melvin Gibbs, who is currently detained at the Prince George's County Detention Center in Upper Marlboro on the basis of apparent threatening letters written recently. There have also been a series of threatening letters which Mr. Gibbs allegedly wrote to others, especially in 2002, but aD FBI agent interview determined that be need not be arrested for those. On the basis of information about Mr. Gibbs' history provided by the FBI Affidavit, by you, and by your client,] do believe that I have a fairly detailed understanding of relevant background information, and his mental health status over the years. You and

he have both reported that this 56-year-old man has no prior arrests for any sort of offense.

Your sole, but very important question at the moment, and undoubtedly that of the Court and th(Government, and of Pretrial Services, is whether Mr. Gibbs would pose any threat of danger to others should he be released from prison while awaiting a resolution of the charges against him.

I have been recognized by other courts in the region as someone able to undertake such an evaluation, have testified about such matters before, and believe I do possess the requisite expertise to provide a worthwhile opinion. I have never had it happen that I suggested someone posed no risk and later found out that the person had soon thereafter injured another. The opposite happened on one occasion when a psychiatric inmate was released against my recommendation and within days went on to kill a stranger.

In my opinion, and to a reasonable degree of psychological certainty, J do not believe that Mr. Gibbs, if released, is going to physically harm another person. While there is no doubt that he feels his treatment by various Government agencies has been unreasonable, and their decisions sometimes incorrect, and subsequently harmful to himself, Mr. Gibbs has strong controls, and a much higher than average ability to use various techniques and his intellectual assets to prevent him from being violent. Although a quick reading might suggest otherwise, I am also persuaded that Mr. Gibbs did not mean his comments as a threat of any intention on his part.

Moreover, right now, your client's life is going quite well aside from his immediate legal problems. He has been married to the same woman for 30 years, and there is a plot of land that the couple had obtained in South Carolina. Mr. Gibbs himself plans to build their retirement home and has worked in home rehabilitation, so that this endeavor is not unreasonable. She, a Montgomery County teacher of 26 years, plans to retire after this year and the couple can expect to have enough money to live a decent life in their new home. Moreover, Mr. Gibbs expects that either the courts of an appeals board will ultimate order the Department of Labor to release nearly $200,000 that they have reportedly agreed is owed to him. In short, he expects life to be good. The expectation of a pleasant future is an important factor in how persons such as Mr. Gibbs acts now.

The client seems to have made excellent use of a therapeutic relationship he had from 1988 through his psychiatrist's death in 1999. Unfortunately, finances then precluded his finding another satisfactory therapeutic relationship, which he apparently sought. Once given the $200,000 by the Department of Labor, a reasonable prospect, he could again get back into regular therapy.

I would recommend therapy now, perhaps twice weekly initially so as to establish the relationship quickly, progressing to once per week if his therapist and the client see fit. Mr. Gibbs took Prozac for years until his doctor suggested he could function without, in 1998, and the issue of his resuming its use (it tends to decrease emotional arousal and irritability for many people) should be discussed by him and the therapist. I would prefer to defer a. diagnosis right now, given the one interview we have had. Please do not hesitate to contact me should I be able to provide any further assistance in your work with this very interesting man.

Sincerely,

Lanning Moldauer

Lanning Moldauer, Ph.D.